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## Legislative Assembly of Ontario

Second Intercession, 36<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième intersession, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 19 August 1998

# Journal des débats (Hansard)

Mercredi 19 août 1998

## Standing committee on administration of justice

Prevention Of Unionization Act  
(Ontario Works), 1998

## Comité permanent de l'administration de la justice

Loi de 1998 visant à empêcher  
la syndicalisation  
(programme Ontario au travail)



Chair: Jerry J. Ouellette  
Clerk: Douglas Arnott

Président : Jerry J. Ouellette  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Wednesday 19 August 1998

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Mercredi 19 août 1998

*The committee met at 1301 in committee room 1.*PREVENTION OF UNIONIZATION ACT  
(ONTARIO WORKS), 1998LOI DE 1998 VISANT À EMPÊCHER  
LA SYNDICALISATION  
(PROGRAMME ONTARIO AU TRAVAIL)

Consideration of Bill 22, An Act to Prevent Unionization with respect to Community Participation under the Ontario Works Act, 1997 / Projet de loi 22, Loi visant à empêcher la syndicalisation en ce qui concerne la participation communautaire visée par la Loi de 1997 sur le programme Ontario au travail.

**The Chair (Mr Jerry J. Ouellette):** I call this meeting to order. The purpose of this afternoon's meeting is for the clause-by-clause consideration of Bill 22. As such, the standard requirement is that I ask if there are any comments, questions or amendments to any section of the bill, and if so, which section.

**Mr Peter Kormos (Welland-Thorold):** I understand that somebody is going to be moving it section by section.

**The Chair:** Yes.

**Mr Kormos:** But you're suggesting that we address the bill in its general form now?

**The Chair:** No. What's taking place is the standard asking of the question and then, when that section of the bill comes forward, it can be moved at that time.

**Mr Kormos:** Perhaps, if I may, Chair, to abbreviate matters, I'll issue my blanket condemnation now to avoid the temptation of repeating my condemnation after the moving of each section.

You know, or you ought to know by now, that the New Democratic Party does not support this legislation. You also know that we've had serious concerns about the matter of this committee considering Bill 22 as compared to the committee that dealt with Bill 142, which would have been the appropriate committee. The only reason this committee was served or had tabled with it Bill 22 was to circumvent the standing order 124 hearing that the committee would have had to conduct with respect to the shooting of Dudley George at Ipperwash. The timing was very clear in that regard. That application had been served on the clerk, and you, the Chair, rightly had been made aware of it, along with members of the committee. Before the day was over, as I recall it, the closure motion appeared in the House. It would terminate, kill debate on

Bill 22 at second reading, and then move it to this committee, justice, as compared to the committee that considered Bill 142, and also set out six days of public hearings.

I know the parliamentary assistant yesterday very specifically contrasted the number of hours of hearings. I don't dispute his numbers. He obviously scrambled and had somebody do that work for him, compile the numbers. So be it. But the fact remains — well, Ms Pupatello, God bless. You owe me one.

The fact remains that six days were set for public hearings. When the parliamentary assistant speaks of the relatively fewer number of hours of hearings, all that reflects or demonstrates is how inappropriate six days were for public hearings. It was clear that there simply wasn't that broad interest in appearing before the committee in any number of communities. Yesterday we were in St Catharines, in Niagara region. We started at 10 and ended I believe at 3 o'clock, give or take. Chatham I concede was a relatively full day, but Cornwall was modest participation, Sudbury even more modest. The fact that there are relatively few hours of time spent doesn't mean that fewer hours of time were allocated. No. The fact is that the government at the end of the day allocated more days, which means more hours, for public hearings on Bill 22 than they did for Bill 142.

The other observation, and I don't disagree with it, is that there were simply far fewer people interested, for a variety of reasons. I was going to say I wasn't going to speculate on the reasons, but there could be any number of reasons, one of them being that it was the month of August and the relatively hard time that many organizations, associations, have getting briefs together, even getting boards together to form an agreement on where they stand on a particular bill.

The only reason the bill came before this committee for six days as compared to two days — there was no negotiation about that. The opposition House leaders weren't consulted about the number of days that the opposition felt were necessary for Bill 22. I can tell you, as we told you the day the committee met to determine location — that is, the four days other than the two that were mandated to be in Toronto — we told you that it was the position of the NDP, and the Liberals made a similar representation, that six days were unnecessary.

The bill was sent to this committee, the justice committee, for those six days, as compared to a lesser period of days, as compared to the appropriate committee, to cir-



cumvent the request under standing order 124, the request as of right for the committee to consider the shooting and killing of Dudley George at Ipperwash park almost three years ago now — the third anniversary is coming up very soon — and of course the specific questions about the Premier's involvement, his staff's involvement or his office's or other governmental offices' involvement.

It's been clear that the government has been working hard to avoid addressing that issue. We've seen that stonewalling in the House. Quite frankly, I thought it was very clever on the part of the government to produce that closure motion. I want to congratulate whoever it was on the political staff who concocted that. I'm serious; it was a very clever ruse. You recall that the opposition House leaders stood on points of order trying to quash the closure motion for that very reason, that it was merely designed to prevent standing order 124 from being invoked. In effect, it was designed solely to prevent that hearing into the death of Dudley George and what, if any, involvement there was by the Premier. The Speaker of course ruled that the closure motion was legitimate. But that clearly was its purpose, that oh so clearly was its purpose, and that is so sad.

In the 10 years that I've been here, I thought I'd seen every angle, every spin, every bit of chicanery, some of them more palatable than others, some of them downright dirty and despicable. I thought I really had had an opportunity to have been exposed to all of them. As I say, it was clearly a legal move on the part of the government, but it certainly was at the very least pettifoggery at its highest, which means pettifoggery at its worst. That's why we've spent six days here and here we are on the seventh.

In addition, and I trust that this will be referred to by other members of the committee, it's clear that the bill is essential because of — no, I shouldn't say that. If the bill were only stating what the omitted section 73 stated — it was 73 that wasn't voted on or wasn't approved in clause-by-clause during Bill 142, if I'm correct — the bill would have read simply what that clause read. This bill expands on what that defeated section of Bill 142 says. I find that interesting as well.

1310

We have had some interesting input, and I'm reflecting on the committee hearings, these six days. Clearly the government, as is its right and as every government does — and that's why the government I believe tried to be very careful in picking the out-of-Toronto locations, just about as careful as it was when it picked the out-of-Toronto locations on 142. I mean, I'll never accuse this government of being dumb. There are some very shrewd players in the backrooms with this government, but they don't always hit the mark.

On 142, when the government chose cities like North Bay, London, Ottawa, Niagara Falls, one reached the inescapable conclusion that it was trying to cherry-pick, that it was trying to find communities wherein there would be more rather than less support for its 142. Yet the government, to its dismay, got trounced day after day during those hearings in those four communities. North Bay: I suppose somebody said, "North Bay is sort of a

pretty conservative stronghold and they don't like those welfare types up there, so we'll try North Bay." Well, North Bay was no more successful at the government generating positive spin on this than Ottawa or London or Niagara Falls.

One suspects again the same effort on this occasion. I recall the subcommittee meeting. Mr Carroll wanted to go to Chatham and I quite frankly figured: "What the heck? What's the use of being a PA if you can't bring a committee to town once in a while?" So we did. Fair enough. I mean, what have you got to say to your people back home if you can't at least bring in — how many people? — 19 or 20, a bunch of hotel rooms and some meals?

*Interjection.*

**Mr Kormos:** Interesting point, isn't it? I suppose when you're a PA — you don't want to be just a PA. You have ministerial aspirations, Ms Papatello. You may even have leadership aspirations. Dalton should keep one eye open all the time.

In any event, my impression was that there was some care used on the part of the government in picking locations again this time. Cornwall has suffered with a whole lot of deindustrialization and Cornwall is perceived as eastern Ontario, where people have maybe a little more small-c conservative perspective. I actually hear that somebody thought Cornwall was a safe place. I enjoyed being there. Mr Cleary greeted us, when we got in in the morning, to his community. I was grateful to him for the courtesy that he showed in simply being there to say, "Hi, welcome to Cornwall." I thought it was a very courteous thing to do. He didn't have to do it, he wasn't obliged to do it, but he's proud of his community and he was pleased to welcome the committee to Cornwall. I was grateful, not only to see him again during the summer break, but for his display of generosity of spirit at the very least, if not outright courtesy and proper etiquette. Mr Cleary is not a boor; that could never be said of him. Had he not been there to greet us, I might have suggested that he might have fallen prey to boorish behaviour, but Mr Cleary is not a boor and has some sense of etiquette and good manners.

What happened in the course of this hearing was that the government clearly reflected on what had happened during 142. They knew that Bill 22 was going to get sort of lost by the wayside and that the overriding issue was going to be the so-called workfare programs. The government's had the daylight kicked out of it across the province because of the lack of success of workfare, and that is to say the small number of placements that have been achieved or that have been acquired. You haven't had very many willing hosts from a variety of sectors, and I'm talking within the public and what I call quasi-public or non-profit sector.

Ms Ecker, as you know, at one point was adamant that workfare would not be extended into the private sector, the for-profit sector. She of course is equally adamant now that it will be. Those of us who are a little more cynical than you are about the government, Mr Carroll, felt that Bill 22 was very much in anticipation of private sector involvement because otherwise the Labour Relations Act



alone, by and large — and not only private sector involvement but also heightening the mandatory nature of it. Otherwise the Labour Relations Act alone, as it stood, would have achieved the goal you say you're trying to achieve.

Mr Courtemanche was the first presenter in Sudbury, and I say to him God bless. He's in an election campaign that's got to be called by September 2. I said to him and his campaign people, "Of course you can get on the committee." Mr Courtemanche did. He was there first. As you know, that's a favoured position. I'm not suggesting anything untoward about how he got that position, because we all know you don't appear before the committee in the afternoon unless you don't want the press to cover you. If you want press coverage, you've got to be there first. The first two or three participants get the press coverage; everybody knows that. Mr Courtemanche was there first. I'm not saying anything untoward happened to get him on first, but he read a Tory campaign speech. God bless. He's in an election campaign. I wouldn't even begin to suggest that I wouldn't have availed myself of the opportunity were I in a similar position. You bet your boots I would, and I would have done it with far more panache, flair and fanfare I suspect than Mr Courtemanche did.

In these very brief hearings we had a total of five submissions. We had a Mr Niro and a Mr Kennedy, as I recall. Mr Niro was the tavern owner. I have no dispute with either. Both those people seem like hard-working entrepreneurs, Mr Kennedy concerned because he's down to just one staff person. Business hasn't been too well since the Tories got elected, it seems, because in the last three years he's reduced down to just one worker. Mr Niro worried because the tavern business simply isn't doing that well. The last three years haven't been particularly prosperous ones for him. Fair enough.

It was Al Palladini who got soapy. He was all wet yesterday. You understand that, don't you? He as much as knocked us off the front page of the *Standard*. He was taking that boat across the lake. Who needs publicity like that? The boat was swamped by a wave. The window broke. So there's Al standing — it was like one of those scenes from those Airplane spoof movies — hugging his life preserver and standing on the seat so that his shoes don't get wet. I don't know which cruise line it was. There are a couple of them so I don't want to misname them. But do you need that kind of publicity? Thanks, Al. Economic development? Yes, real big. Like, front page. The boat almost gets swamped.

In any event, it was clear — and no quarrel with either Mr Kennedy or Mr Niro. Mr Kennedy, though, complained about not having received his materials. At first I was embarrassed for perhaps either Mr Bartolucci or Shelley Martel. I thought, "Oh, maybe he requested them of one of the local MPPs' offices." I asked Shelley and she said, "He didn't ask for them from my office," and Rick Bartolucci wasn't there. But then I realized, "Oh, no," because he didn't want to say whose office didn't give them to him. It was clear that Mr Kennedy was a ringer, not that anything he said was less than true, but he was a ringer, he was set up. The government, as it has every

right to do, tried to ensure that there were going to be some good things said about workfare, even though it had no relevance to Bill 22. So Mr Kennedy raised the suspicion, because he said, "No, I don't want to say who failed to give me the material."

By the time we got to Cornwall, the cat was out of the bag. We saw Ms Laperrière in the morning and Ms Adams from the Heart and Stroke Foundation. Ms Adams and Ms Laperrière seemed like ideal hosts for on-the-job training. It doesn't change my views about mandatory workfare, but they seemed to be ideal hosts. Both of them clearly, upon questioning, indicated that they had been called upon to be there by the local placement officer for workfare working out of the local social services. We brought a point of order — and I understand the Chair's ruling — yesterday morning and we raised that.

1320

These hearings have really been pretty bogus. I regret these hearings. I, on behalf of the New Democratic Party, will not be supporting any section of Bill 22. It neglects and fails to address the real issue, and that is, who is poor, why they're poor and what we can do about it. It neglects to address the real issue; that is, a governmental policy of sustaining and maintaining high levels of unemployment to protect the economic interests of the very wealthy.

Thank you kindly, Chair. I assure you that having had this opportunity will cause my comments on section-by-section to be much briefer than they would have been otherwise.

**The Chair:** Thank you, Mr Kormos, although there are about 36 seconds left of the —

**Mr Kormos:** That's yours.

**The Chair:** Thank you. Shall sections 1 up to including 4 be dealt with all at one time?

**Mr Kormos:** Wait one moment. That requires unanimous consent?

**The Chair:** No, it does not.

**Mr Kormos:** This is a motion?

**The Chair:** A motion can come forward to deal with that issue.

**Mr Kormos:** So you're seeking consent now?

**The Chair:** I'm asking if it's the wish of the committee to deal with sections 1 up to including 4 at one time.

**Mr Kormos:** No.

**The Chair:** OK. Shall section 1 of the bill carry?

**Mr Kormos:** One moment. With respect, before calling upon the committee whether it carries, I suggest the Chair should be calling for any debate or comments around section 1 before there's a vote.

**The Chair:** Is there any debate on section 1?

**Mr Kormos:** Section 1, as I referred to in my preliminary comments — and the committee was very generous with me in that regard — is a significant deviation from what in fact was omitted from Bill 142. It moves on, becomes very specific and precise. It's the one that specifically says that so-called mandatory workfare participants cannot, shall not, join a trade union.

I agree it says with respect to his or her "participation in a community participation activity." That's the whole point. We find that repugnant. I tell you that I am



confident — and this committee has heard so much commentary from pretty capable sources — that at the very least paragraph 1, “join a trade union,” is contrary to the Charter of Rights and Freedoms — at the very least, just to begin with.

The government is inviting litigation in this regard. It will be expensive litigation. I didn't have time to ask one commentator who appeared to have a pretty good grasp of it whether the government would — the one lawyer from the community legal services, or the assistant professor at the University of Western Ontario. Do you recall him in London? I wanted the chance to ask him whether in his view we've got the “notwithstanding” clause in the charter but we also have the province's right to use the non obstante clause. I was wondering whether this government was going to entertain, or whether it could entertain, the non obstante clause in a challenge and what the legislative framework for that is. I really don't know.

Quebec used it, of course, for its language bills, which are clearly contrary to the Charter of Rights and Freedoms. It used that non obstante section.

I clearly think the right to join a trade union is paramount and that no Legislature has the power to take that away under any circumstances.

Furthermore, the second and third paragraphs, the collective bargaining and strike provisions, I believe clearly anticipate and contemplate moving workfare far beyond what it is now into the position of the for-profit sector, having made available to them very low-paid — what amounts to workers who will be displacing real jobs as the American experience has shown. We find this section of the bill thoroughly repugnant. We'll be voting against it and I shall be asking for a recorded vote, please.

**The Chair:** Further discussion? Seeing none, shall section 1 of the bill carry? All those in favour?

#### Ayes

Boushy, Carroll, Klees, Skarica, Stewart.

#### Nays

Cleary, Kormos, Papatello.

**The Chair:** I declare section 1 carried.

Discussion on section 2?

**Mr Kormos:** Mr Chair, this is interesting as well because it contemplates what the parliamentary assistants have been denying from day one. It contemplates that the Ontario Labour Relations Act could apply to workfare participants. This is the retroactive section here.

That is very interesting. The parliamentary assistant and the other parliamentary assistant insist that in no way are these people workers. Then why is there a need to eliminate them from any consideration under the Ontario Labour Relations Act? That is very, very interesting.

This bill is becoming pretty long in the tooth. Its first reading was in May. But I suspect the government, had workfare been more successful in terms of numbers, was concerned — clearly it was — about the prospect of the Ontario Labour Relations Act being applicable in terms of

these people being deemed by a body, board or a court, as yes, being workers and having a master-servant, employer-employee relationship in their workplaces. Again, that contradicts everything that's been said by the parliamentary assistants and by the minister.

So section 2 speaks volumes about what was really in store. I suppose we should just be grateful in the regard that workfare hasn't been a success because clearly the government had bigger plans for it than were given effect to since May.

I'm voting against it and I'll be asking for a recorded vote again please, sir.

**The Chair:** Thank you, Mr Kormos. Further discussion? No.

#### Ayes

Boushy, Carroll, Klees, Skarica, Stewart.

#### Nays

Cleary, Kormos, Papatello.

**The Chair:** I declare the motion carried.

**Mrs Sandra Papatello (Windsor-Sandwich):** Mr Chair, for the record I'd like to note how quickly everyone is responding to the vote this time around.

**The Chair:** I'll take that as a reflection.

**Mr Kormos:** Some people might have nodded off and you woke them up.

**The Chair:** Further discussion on section 3? Seeing no discussion on section 3, I shall call for a recorded vote.

#### Ayes

Boushy, Carroll, Klees, Skarica, Stewart.

#### Nays

Cleary, Kormos, Papatello.

**The Chair:** I declare the motion carried. Section 3 carries.

Discussion on section 4 of the bill? Seeing no discussion, shall section 4 of the bill carry?

**Mr Kormos:** Mr Carroll had his hand up.

1330

**Mr Jack Carroll (Chatham-Kent):** No, I'm just getting ready to vote. I just want to make sure —

**The Chair:** Shall section 4 of the bill carry?

**Mr Kormos:** A recorded vote, please.

#### Ayes

Boushy, Carroll, Klees, Skarica, Stewart.

#### Nays

Cleary, Kormos, Papatello.

**The Chair:** I declare section 4 carried.

Discussion on section 5?

**Mrs Papatello:** I think everyone has a copy of the motion I am presenting for section 5 of the bill.



I move that section 5 of the bill be struck out and the following substituted:

"Short title

"5. The short title of this act is the Create a False Enemy to Distract the Public While Actually Cutting Services to Needy Children and Their Families Act, 1998."

We've made it clear from the very beginning that this entire procedure has been nothing but a sham and a complete waste of taxpayers' money.

As you know, and for those of you who might have missed this information initially, last fall we may have been in this very room when one of the members of the committee, a Conservative member, during clause-by-clause passage of Bill 142 — we went through each of those clauses, and when they were being passed, while we tried to defeat the bill as a whole because we don't agree with it, the bill passed nevertheless, clause by clause, until we reached section 73.

At that time there were enough government members — one out of the room, one doing correspondence, one reading the newspaper and the fourth one sleeping, thereby having this bill now dubbed the Sleeping Beauty bill because one of those members was asleep, although he denied being fully asleep. We admit that he was not moving for a minimum of 15 minutes and his eyes were closed, so we deduced at that time that he would have been asleep.

**Mr Kormos:** And you didn't do anything? He could have been dead. Heartless.

**Mrs Papatello:** The point being that when a government has a majority on a committee, which it does, it can pass any clause it wishes. If it's going to go to the trouble of doing this kind of monumental change to the welfare system, which they call reform, which we call a complete dissolution of the system that no longer helps people, and we see evidence of that already — they've decided to do this — at the very least they could have had the committee prepared to vote where it was supposed to vote.

The result of that, whether you want to call it laziness or incompetence or just absolutely no feeling whatsoever for what you're doing, you have now cost the taxpayer well in excess of \$750,000. We've used a round figure of \$50,000 for all of the additional time and expense since the seven hours of debate, of course, the debate in the House for the first two readings of the bill at \$100,000 per hour and seven hours so far. That is a government calculation, by the way, so we assume that's accurate. It could in fact be more — spending all that time because you were incompetent.

Now, after several months and the minister at the time saying that something would have to be done because that was a really bad section to miss — you could have missed lots of other sections, but that one really was a key feature of the bill. If the parliamentary assistant — I don't know who was in the chair at that time — had been watching the bill like they were supposed to, they would have gotten to section 73 and said: "You know, that's one of the key sections of Bill 142. Top it up, guys. Let's go. Got to keep

yourselves awake. We've got a really important part coming up."

In fact, it became one of the cruxes of the matter to have you implement your reform. So if you were going to pick any section, it was really bad luck that you picked this one to sleep through. Because of that, you still could have avoided the waste of taxpayers' money by introducing anything you wanted through regulation. If you know Bill 142 enough, there is every single opportunity to bring in all kinds of change through regulation. You could have done that. By order in council the minister can make all kinds of changes to peoples' lives and no one will know until after it's done. You could have done that, but instead you chose to write a bill and send it through the political machinery of all your little whiz kids, probably the same gang that makes up those little cassettes that you pop in the car for the Common Sense Revolution so you can hear the message on your way home each night, like some kind of Peyton Place or something like this.

In any event, you could have done all of that but you took it, put it through the political machinery and out you've come with another "slam labour," just to give you an opportunity to traipse around Ontario once again with your political propaganda, not even telling the public the truth about the three-year record of Mike Harris on welfare reform, which is an utter and abysmal failure.

Let me be on record. Any Conservative MPP who could stand idly by, as all of you have, with a 97% failure rate of your workfare program — I'm going to be particularly paying attention to what you say in your communities when it comes to the next election, whether you'll have the gall to go stand in front of your constituents again, where you promised last time, "They will work for their benefits." Let's be very clear. That was your promise.

What they got was a whole bunch of gobbledegook, a 97% failure rate, because that is not what's happening out in the field. When we travelled Ontario, we confirmed that. Even though you made us go through freedom of information to get accurate details and numbers from this ministry because you refused to release them, we found out nevertheless that this is the worst failure of the Mike Harris government, and every single one of you will wear it.

**The Chair:** There will be no further discussion. Pursuant to standing order 74(b), I'm ruling the motion out of order.

**Mr Kormos:** You could have waited till I spoke to it before you ruled it out of order. How fair is that? Mrs Papatello gets to speak, and I don't get to speak to it.

**The Chair:** That's because it was her motion that was brought forward. She was speaking to the motion.

**Mr Kormos:** It was deemed out of order only after you heard what she had to say?

**The Chair:** Order.

**Mr Frank Klees (York-Mackenzie):** On a point of order, Mr Chair: I just wanted to say that having seen Mrs Papatello's motion, it did confirm for me that she does have a sense of humour.



**The Chair:** That is not a point of order, Mr Klees.

**Mr Klees:** If I can just complete my thought.

**The Chair:** No, Mr Klees, it's not a point of order. We will continue.

Shall we have discussion on section 5?

**Mr Kormos:** You bet your boots. I was going to oppose Ms Papatello's motion. Do you know why?

**The Chair:** No, I don't.

**Mr Kormos:** Because after three years the public has learned that Tory bills mean the exact opposite of what they're titled. So Ms Papatello would have perhaps created some confusion among so many Ontarians, because by calling it a bill to create a false enemy while actually cutting services, the public, now knowing that the titles of bills are exactly contrary to what they mean, might have thought this was a good bill. With every regard for Ms Papatello and the cleverness of the amendment — and I for the life of me can't figure out why it's out of order. You'll tell me later, I suppose.

Let's not forget Ms Papatello made reference to the failure, the absolute negligence on the part of government members when they allowed section 73 of Bill 142 to be defeated in clause-by-clause consideration. But, Ms Papatello, people have already been punished. Both Jack Carroll and Frank Klees were scheduled for cabinet positions, and you notice neither of them got promoted to cabinet. They paid the price for their oversight. They made Bob Wood go on the crime commission. He has to share takeout chicken with Jim Brown, and sharing food with Jim Brown is not a pleasant prospect.

**Mrs Papatello:** He wants to wear that flasher coat.

*Interjections.*

**The Chair:** Order, please. One speaker at a time. You have the floor, Mr Kormos.

**Mr Kormos:** The Premier has already taken care of Mr Carroll and Mr Klees. They've already paid a price for having neglected their duties. They had already picked out the colour of their cars and the leather interior. Jack had a deal set up in Chatham. Another broken promise. There's some GM dealer there saying: "You SOB. I ordered two of these special, and I can't unload them now."

The price has already been paid. The Premier didn't fail to notice the negligence and the failure — I suppose what's more remarkable, the failure, and I agree with you entirely, Ms Papatello, when you talk about how this doesn't have to be done at all other than for the very insidious reasons that we've already commented on — of the government to whip up any enthusiasm for workfare during this round of public hearings. They blew the PR end of it again. They blew it big time on 142. They figured they'd have a second kick at the can.

They had their horribly staged and badly set up participants, who were embarrassed and angry, it seems, especially Ms Laperrière and Ms Adams from the Heart and Stroke Foundation. They wanted to create the impression, like Stalin wanted to create little peasants on his collective farms, that they were all happy little workers. I'm old enough to remember the photos and the Life magazine coverage. There was even a Canadian magazine

called Northern Neighbours — I don't think anybody here has read that — a glossy, pro-Soviet thing that was published, I suspect, with Moscow gold here in Canada, but again had all these rosy-cheeked peasants working in Ukraine and other parts of the Soviet Union.

It's just like the advertising campaign that came out — as a matter of fact the news broke on it the day we were in London on Bill 142. But he failed because the people were obviously set up. As I say, they were a little embarrassed and angry at finding out that they had in effect been set up. The government utilized governmental civil service-type people who tried to line up the workfare success stories.

But it seems that where there has been anything akin to its success that the net effect of the workfare has been voluntary. Do you understand what I'm saying, Chair? There have been cases where in effect it has been voluntary. I suspect that in most places — you see, this is part of the toolbox that the government gave municipalities. They download and they're going to give them a toolbox, and one of the tools is the power to give municipalities a great deal of breadth or leeway in terms of how high their threshold can be for people to get social assistance.

We have never disputed that workplace co-op style training can be, for some people, part of an effective training program. That's why the chamber of commerce from St Catharines and Thorold yesterday were uncannily in tune with what CUPE, for instance, has said about workfare. If you read the statements and the submissions made by CUPE, you'll find the submissions of the chamber of commerce so uncannily similar to CUPE's because the thrust of it and the difficulty is the mandatoriness of it, the threat it creates to real jobs, the threat that poses to human dignity and the disdain it shows for the poor and, as I say, this phenomenon I spoke with Ms Eagle about yesterday.

The St Catharines Standard headlines their coverage of yesterday's meeting by pointing out that a well-known provincial social activist was cut off because the Tory members didn't want to use up two minutes of their lunch period to let her respond to the attack and critique of her submissions made by one of the parliamentary assistants. Those sorts of things that occurred during the course of the committee hearings speak volumes.

I should tell Ms Papatello that at first I wasn't going to support her amendment because of the fear I had because everybody knows that people know that the bill is the opposite. It's like deregulating rent, right? Like all those bills, people know that the title of the bill is the opposite. I might have voted for it simply so I wouldn't be voting with the Tories because surely they would have voted against it, but then again they might have voted for it, knowing that the public has learned full well that the titles of bills mean exactly the opposite. I regret not having had even the opportunity to vote on your amendment.

*Interjection.*

**The Chair:** Order, please.

**Mr Kormos:** But I'll tell you this: I'll certainly be voting against section 5 of this bill. That I have no equivocation about. I've had several months to consider

where I'm going to stand on that one. That one's not a hard call at all. Thank you, Chair.

**Mr Carroll:** I just want to set the record straight on a couple of things. Mr Kormos, your explanation regarding Mr Klees and I may be appropriate for myself, but I must tell you Mr Klees was not here at that particular clause-by-clause, so you may need to come up with a new reason as it pertains to Mr Klees.

**Mr Kormos:** How did he screw up then?

**Mr Klees:** Many ways. You can't count them.

**Mr Carroll:** There are just a couple of issues I'd like to cover. One is to make sure everybody understands and the record understands that there was an opportunity back here in clause-by-clause to preclude what has happened with Bill 22 from happening. Ms Papatello chose not to take advantage of that.

**Mrs Papatello:** That is a crock.

**Mr Carroll:** I just want to make sure that is on the record.

**The Chair:** Order, please.

**Mr Carroll:** The other issue, Ms Papatello has gone to great lengths to talk about using the \$100,000 an hour and to talk about the waste of Bill 22, and I agree with her. I don't think we should be wasting the government's hard-earned money, so I got checking into some things where maybe we could have saved some money in the past.

I went back and looked at the record regarding Bill 103, the filibuster. I think it's interesting that if you take the \$100,000 an hour number that Mrs Papatello has been using all through the committee hearings and you multiply it by the 204 hours that the Liberal caucus kept us hostage in the House during the debate on Bill 103, that translates into 20 million wasted dollars of taxpayers' money that our friends in the official opposition brought upon the taxpayers of Ontario regarding Bill 103.

I agree with her that we should not be wasting taxpayers' money, and if we accept her philosophy that we wasted \$700,000 on Bill 22, then we must also accept the realism that her party caused us to waste \$20 million on the part of the taxpayers during Bill 103. I just wanted to put those couple of issues on the record and to tell you that I obviously will be supporting section 5.

**Mrs Papatello:** Just as a wrap-up, let's be clear. Throughout these hearings Mr Carroll was obviously annoyed. We were obviously striking a chord. When we asked presenters, "Did you know this was because they fell asleep?" they hadn't heard anything about it. You seem to be very selective when you call your witnesses to appear. To some of them you said, "No, we just want you to come and talk to the minister about how great your workfare site is." That's what they told us when we got there to Cornwall. They were called, through the bureaucrats, "Come on, you're just going to appear in front of the minister and you're going to talk about how great your workfare site is." They didn't even know there was a Bill 22, didn't know its contents, nothing.

When we suggested that all of this was a big sham and you just want to go traipsing around so you can get better headlines than you seemed to get last time, because the last time on the 142 hearings it was an abysmal failure as

well, you denied it. "It's not a photo op." We took the break for lunch, and when we came back from lunch, what were they doing right at the head of the table but lining themselves up like schoolchildren at the annual photo day, taking a picture with the local welfare participant group. Give me a break. Do you think this is lost on any of us?

I don't have a big S for stupid on my forehead; at least I'm not it every day, in any event. The whole thing has been such a complete sham, and I'm only glad that we had the opportunity, even though we wanted to cancel this and save the taxpayers money, to have to chug along with you on this little charade and have some opportunity to let some people know what exactly it was you put the people through all of this time when you know full well your minister could have made the changes by regulation. You did not have to spend a dime.

If you think you're going to make one kind of example about everyone else wasting money, how dare you. It is a complete spendthrift government that I'm looking at. Moreover, I have insisted that your PC Party pay back the money to the Ontario taxpayers. You should pay back every red cent.

When each one of you is alone, every single one of you has admitted how stupid this is, and you're in a public forum and you've got the gall to argue the point that we've been making? Don't even argue the point. Don't even argue the fact that you've wasted taxpayers' money. Jack, don't even go there. Don't bring yourself to that. Just say, "Mea culpa, mea culpa, we've wasted the taxpayers' money," and let's move on.

**Mr Dave Boushy (Sarnia):** You should be in the movies.

**Mr Klees:** Mrs Papatello surely should be nominated for an Emmy for that performance.

**Mr Boushy:** I second that.

**Mrs Papatello:** If I throw my shoe, will you nominate me?

**Mr Klees:** For someone who I know in her heart — I have heard Mrs Papatello speak eloquently about her concern for people in this province who are in need of help, so I know that in her heart she knows that this is the right thing to do. She knows that the Ontario Works program, with its employment support, with its community participation, with its employment placement component, is in fact well overdue in this province and is the right thing to do for those in our province who are in need of a helping hand to take that very important first step towards self-sufficiency.

**1350**

She does very well at reciting the party line. I know it must be a struggle for her intellectually as well as emotionally to on the one hand have to express opposition to Ontario Works and this particular bill when in her heart she knows that if she had the freedom to do so, she would not only want to join with us in the government to support this bill, but join with us across the province to talk about the benefits and the hope the people of Ontario now have because of Ontario Works.

On behalf of my colleagues, we want to express our concerns for Ms Papatello's struggles, wish her well, and



look forward to the right thing happening in this place when this bill is brought before the House.

**Mrs Pupatello:** You just had to have the last word. It's just a guy thing. You can't have me have the last word on the record.

**Mr Toni Skarica (Wentworth North):** I find intriguing Mr Kormos's remarks that Mr McGuinty should keep one eye open towards Ms Pupatella. What I've learned in these hearings is you have to keep both eyes open at all times no matter who you are.

**Mrs Pupatello:** You're always having problems with my name.

**Mr Skarica:** Apparently, Mrs Pupatello is clipping out things that I say and she's going to use them for her re-election, so I'll add one more comment. I frankly think Mrs Pupatello is quite a talented individual, as I do Mr Kormos. I don't know Mr Cleary, I'm sorry, but I know the other two individuals quite well, and many of the members in my caucus I find quite talented. So I wanted to make some non-partisan remarks about the entire committee process.

In my opinion — and we spend millions of dollars on this process — it has degenerated into this partisan, barroom brawl type of situation which does no one any good, including the electorate.

For example, two days ago this was a submission made to the committee by a worker advocate for one of the unions, and I'm not going to mention it because I don't want to embarrass him. But this is an example of what this process has degenerated into:

"In last week's *Globe and Mail*, our reviled Premier stated that he would not be calling an election until he lost 20 pounds. Well, Mr Harris, there is one thing the voters of this province know: The 20 pounds of fat you carry around is situated firmly between your ears."

That was written right in the committee. That was so-called testimony. That is not useful at all. It is to me a total waste of time and money to be going around the province — and I don't care who the government is, whether it's the Conservative government, the Liberal government or the NDP government — spending millions of taxpayers' dollars. People want to testify. Ms Pupatello made a motion the first day I was here that these hearings were a sham and let's close them down. But the next day we heard from the union people themselves that they wanted input, that they wanted to testify.

It seems to me that what we need is an entirely different process. When you go around with the committee, each party picks their people who then testify and basically give a partisan testimony which isn't helpful at all in developing the legislation, I find.

There were a couple of frustrations I had in the last couple of days that illustrate how this committee money and time could be better spent. On the lunch hours, we went to visit people who were involved in the Ontario Works process. I took them aside when there was no one around — because I don't think you can get an honest answer when there are bureaucrats and people administering them there — and some of them said they were delighted with the program. Some of them said they had

reservations. I wanted to know from them how they felt as individuals going into a situation where they were on welfare and everybody knew it. I wanted to know if their dignity was being infringed, and if it was, how that could be addressed. We weren't able to investigate any of those issues. It seems to me that you could have a lot better process where you could have representatives of each party do real cross-examination and have the power of subpoena.

I was very disturbed to hear from a member of the John Howard Society, who indicated they have a 90% success rate — that's terrific news — that they're not being used. The suspicion is that the bureaucracy is duplicating their services, which means it's going to cost all of us money for that to happen. I'd like to subpoena some of those people to get them in here and find out the real truth.

The truth is the one thing that these committee hearings are not interested in. They're only interested in a partisan approach. I find it disgusting. I don't want to be involved in calling Mrs Pupatello names or Mr Kormos names and going on the road and being insulted or hearing the Premier insulted or his office insulted. The purpose of spending millions of dollars is to get good legislation and to get balanced, fair testimony.

These hearings — and I don't care what government is in. I read the OTAB hearings. If you really hate somebody, force them to read that crap. That was when the NDP was in power. It was the same situation, where the opposition were totally frustrated and it degenerated into name-calling. I don't want, as a taxpayer, to spend millions of dollars to have people calling each other names. I prefer just to go to a bar, order a couple of beers and do it there.

**Mr Kormos:** In the context, of course, of section 5, I want to respond to Mr Skarica. Mr Skarica knows that I have some sympathy for some of his concerns. But I must say that the lecture style — let me say this to Mr Skarica. For him to have raised that in the context of this particular hearing I think was most inappropriate.

I don't disagree with anything you say. I'm going to tell you something. I've been here for 10 years. I mentioned that earlier today. I'm not pleased about that, because it means I'm 10 years older than I was when I started. But I was here in this Legislature at a time that, for instance, when a party leader was addressing the Legislature, he or she wasn't heckled, by virtue of being the party leader. My beginning here was when David Peterson was the Premier. When the Premier was addressing Parliament on a bill or for any other reason, people listened, or the leader of the Conservative Party or the leader of the NDP.

You talk about behaviour in committees and the conduct of participants. I'm afraid the nature of the Legislature has forced participants — lay people, if you will, civilians, whatever you want to call them — into trying to one-up.

Let's get back to Mr Skarica. I have no doubt that your comments are heartfelt, but to make them in the context of this committee — you weren't there. You weren't at the subcommittee. The only reason this bill is before this committee is because I tried to use my rights under

standing order 124 to have a hearing by this committee into the shooting of Dudley George, because there was no other agenda before this committee. Those were my rights, and my rights were circumvented.

Again, I understand what you say is heartfelt and, as you well know, I'm inclined very much to agree with you. But a very serious issue. Are our approaches partisan? You bet your boots they are. But the trend — I'm going to tell you, I cautioned my own colleagues when they initiated the rule changes. I experienced the David Peterson rule changes, which were done in consultation with the other two party leaders and House leaders, and it was a consensus that was reached. Similarly, I cautioned my colleagues, many of whom were already estranged from me, that they will rue the day when they effect their rule changes. The fear on Bob Rae's part was that I was going to filibuster his auto insurance bill.

Similarly, I sat and watched your government's rule changes. You talk about the cost; I talk about the myth of democracy, quite frankly, when we look at how business is done in these committees. When you talk about cost, what price do you put on democracy?

**1400**

I've got to tell you, Mr Skarica, with all due respect to you, a speech wasn't inappropriate but for the fact that you made it in front of me in this particular hearing, when my right to use standing order 124 was hit so far out of the ballpark it will never be seen again by what is nothing more than pettifoggery, by using the rules of the House in a very cheap way to run a closure motion through to knock out the standing order 124 request. I feel very badly that you would talk as you have in the context of this committee with me here. I'm looking forward to talking with you about that more, because I've spoken about it many times in many places.

**Mrs Papatello:** I just want to note my appreciation for Mr Skarica's comments, because frankly I do agree with what he said. While we might joke around, I agree with quite a bit of what he says, actually. I have a lot of respect for this particular member.

I would encourage this member to do something about it. I think it's good to have this kind of opinion, and it does absolutely nothing if you're not prepared to do something about it. I would switch places with you in a New York minute to be on a government side of the House when you have a really good idea, because just being there and coming to this committee and sharing that with us will send you absolutely nowhere in getting any kind of change in the system. I would encourage you to do that.

But you'd have to switch places with me to see what we have had to use in terms of tools to try to effect our message that there even exists an opposition, that there are any tools left at all for the opposition parties, that there is any respect left in that House for the concept of having Her Majesty's loyal opposition in the House. I would switch places with you in a minute. I'm not going by my limited three-year experience but by those in my party who have been there for over 20 years and have watched over the years what has happened to the respect that's shown to Her Majesty's loyal opposition.

The best thing that probably happened to me personally was being elected in opposition, because I will forever appreciate what its role really is. The way that I personally have been stymied, put hurdles to, every obstacle you can imagine — but this, the height of hypocrisy with Bill 22 on public hearings, is probably the best example to use, the biggest waste of money ever by this government. It will be my continuing example to use in the balance of my term here: this government that is supposed to be fiscally conservative doing this to the people of Ontario, despite the politics. I mean, at the end of the day you're supposed to leave some partisanship outside somewhere and just be sensible, reasonable people, but this went completely out the window where this bill was concerned.

In the end, I can't say that the public even noticed what you did. That's the worst part for you. If you were going to go to such a waste, you could have at minimum been successful at it, but I don't think you even achieved that with this bill.

If Mr Skarica would like to set up some kind of tri-party committee to have some kind of focus on what this system is about and how it has to be improved, I would volunteer my time for that kind of committee and effort.

**The Chair:** Seeing no further discussion, shall section 5 of the bill carry?

**Mr Kormos:** Recorded vote, please.

**Ayes**

Boushy, Carroll, Klees, Skarica, Stewart.

**Nays**

Cleary, Kormos, Papatello.

**The Chair:** I declare section 5 carried.

Discussion on the long title of the bill?

Seeing none, all those in favour of the long title of the bill carrying?

**Mr Kormos:** Recorded vote.

**Ayes**

Boushy, Carroll, Klees, Skarica, Stewart.

**Nays**

Cleary, Kormos, Papatello.

**The Chair:** Shall Bill 22 carry?

**Mr Kormos:** Recorded vote, please.

**Ayes**

Boushy, Carroll, Klees, Skarica, Stewart.

**Nays**

Cleary, Kormos, Papatello.

**The Chair:** Shall Bill 22 be reported to the House?

**Mr Kormos:** Recorded vote, please.



**Ayes**

Boushy, Carroll, Klees, Skarica, Stewart.

**Nays**

Cleary, Kormos, Pupatello.

**The Chair:** Thank you.

Mr Kormos, a comment?

**Mr Kormos:** Yes, just very briefly. I presume we're adjourning.

I made an observation during these committee hearings, and that was that you as Chair were called upon a number

of times to entertain primarily points of order, some of which were serious ones, some of which had some substance, from the very beginning with the difficulty over the status of standing order 124 and my request for the 12-hour inquiry. I'm not sure I've ever done this, but I do want to express my gratitude to you for your handling of what at times were some very sensitive issues that were very partisan. You conducted yourself in an exemplary, non-partisan way, and I appreciate that.

**The Chair:** Thank you very much, Mr Kormos.

This meeting of the standing committee on administration of justice sits adjourned.

*The committee adjourned at 1406.*







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**Official Report  
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(Hansard)**

**Monday 28 September 1998**

**Journal  
des débats  
(Hansard)**

**Lundi 28 septembre 1998**

**Standing committee on  
administration of justice**

**Red Tape Reduction Act, 1998**

**Comité permanent de  
l'administration de la justice**

**Loi de 1998 visant à réduire  
les formalités administratives**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Monday 28 September 1998

Lundi 28 septembre 1998

*The committee met at 1701 in room 228.*

## RED TAPE REDUCTION ACT, 1998

LOI DE 1998 VISANT À RÉDUIRE  
LES FORMALITÉS ADMINISTRATIVES

Consideration of Bill 25, An Act to reduce red tape by amending or repealing certain Acts and by enacting two new Acts / Projet de loi 25, Loi visant à réduire les formalités administratives en modifiant ou abrogeant certaines lois et en édictant deux nouvelles lois.

**The Vice-Chair (Mr E.J. Douglas Rollins):** Ladies and gentlemen, I'd like to call the standing committee on administration of justice to order. The first business on order is Bill 25, and there should be a motion for a subcommittee report. Moved by Lillian Ross. Can we have a seconder for that report? Seconded by Mr Stewart. Any discussion on that report?

**Mr Peter Kormos (Welland-Thorold):** Obviously we have a list of the anticipated participants obtained from the clerk, and I'm grateful to him. It would appear that in view of the fact that there are three slots open waiting for participants, the time frames selected were not by any good planning but by accident appropriate. Perhaps we could determine from the clerk whether he anticipates any further requests for participation in the hearings.

**Clerk of the Committee (Mr Doug Arnott):** The deadline for receipt of requests to participate was Monday, September 21. I've not had late requests.

**The Vice-Chair:** If there were other people confirmed, they will be here. Any other discussion on the motion?

**Mr Kormos:** One more point. I should indicate that here we are sitting five days, one day, today, being members' statements and five days being submissions. It was only an hour a day. Obviously this committee would usually sit from what, 3:30 or soon thereafter, whatever the craziness, until 6 o'clock. Heck, these could sit, in total, a good two-day or three-day maximum, no two ways about it, except the committee had its hands tied.

I think to vote on the subcommittee report is a little bit redundant because the only reason the committee is sitting for six days is because of the time allocation motion. No House leader from the opposition parties suggested that six days is necessary to hear all of those submissions. In fact, it's a bill sponsored by the Minister of Consumer and Commercial Relations, which is pretty omnibus. It ends up

here in the justice committee and it covers everything from soup to nuts because, and we know the reason why, the time allocation motion referred Bill 25 to this committee for a total of six days. In other words, the committee was compelled to sit for six days to displace any standing order 124 application for consideration into the shooting and death of Dudley George at Ipperwash and to make inquiries into what, if any, involvement there was by the Premier or his staff in his office into that shooting.

That's why the bill's here, that's why it's consuming six days of committee time and that's why the committee undergoes the embarrassment of sitting for only an hour a day. There are no more participants. The government members like to talk a big game about efficient use of House time and committee time. I don't think this is a very efficient use of committee time or of House time. We all know it's very, very transparent. We all know the reason that this bill is in front of this committee for a total six days when there are only enough participants to permit an hour a day of sitting is to sidestep, circumvent my rights, any other member's rights, opposition members. What's interesting is that standing order 124 is an opposition member's right and it's spelled out, it's articulated very specifically in the standing orders. It's not, let's say, a right that's merely time-honoured or one of tradition. It was actually considered important enough to be included in the standing orders and it's been there for a good chunk of time. It's been there for the 10 years I've been here and it precedes that, I'm sure of it.

I think it's pretty sad that an articulated right of an opposition member, whether it's me or any other opposition member and whether it's now, in 1998, or down the road, that those modest rights — because they are modest — are attacked and confronted as that time allocation bill attacks and confronts what were my rights under standing order 124, in view of the seriousness and the tragedy of the shooting of Dudley George and some very strong suggestion that the Premier, the Attorney General and the Solicitor General have not been forthcoming in response to questions put to them about Ipperwash.

The party labels are rearranged, but I can't help but reflect upon, by God, these people, the government members' federal cousins, along with other opposition members in Ottawa, who are doing some very adamant and aggressive questioning in question period in the federal House with respect to non-disclosure. In that instance, it's alleged non-disclosure by the Prime



Minister. So it's interesting. Now mind you, I appreciate that for some of these government backbenchers their federal cousins are the Reform members, but once again the Reform Party caucus of the federal Parliament has been pretty aggressive in accusing the Prime Minister of non-disclosure and of course referring to the APEC police conduct and the Prime Minister's role in that.

It's interesting how, by God, it all depends whose ox is being gored, I guess, but the games that are played in an effort to defeat the truth and any search for the truth. Diogenes would be a pretty sad person around this place right now, let me tell you. He'd be an awful lonely person and he'd be wandering these hallways, just awandering and awandering and awandering.

**Mr Mike Colle (Oakwood):** Where is he a member from?

**Mr Kormos:** Diogenes would be an awful, awful lonely person in this particular chamber.

You know what I'm going to do. I'm going to oppose the subcommittee report. I'm going to vote against it because I think the subcommittee report is irrelevant or redundant in view of the fact that the subcommittee had no control. I was there at the subcommittee and they had no control. It had to meet for six days because the Premier's office wanted to block any effort to use standing order 124 to consider the death of Dudley George. As you know, there was just the recent commemoration of the anniversary of Dudley George's tragic death, his slaughter, an innocent unarmed man slaughtered.

I'm going to ask for a recorded vote and I'm going to vote against it.

**The Vice-Chair:** We'll have a recorded vote.

### Ayes

Boushy, Hudak, Ross, Stewart, Bob Wood.

### Nays

Colle, Crozier, Kormos.

**The Vice-Chair:** I declare the motion carried.

At this time we will start our deliberation by the parties and we will turn it over to the parliamentary assistant, Lillian Ross.

**Mrs Lillian Ross (Hamilton West):** We're here today to talk about Bill 25, one of the government's red tape bills. As everyone is aware, in 1996 the Premier set up the Red Tape Commission whose mandate was to look at all the thousands of pieces of paper that government generates to see where we could promote efficiencies and eliminate waste and duplication, to provide better service to consumers. This red tape bill is another of those bills that hopes to achieve that purpose, to achieve government efficiencies and better service to business who, as we know, are the people who create the jobs in this province, always keeping uppermost in mind the public interest at heart.

This particular red tape bill, Bill 25, consolidates seven red tape reduction bills that were previously before the Legislature. There was a total of 17, and 10 were passed by the Legislature, but because of the heavy agenda, it was impossible to complete the process for the others. Therefore, the seven bills have been consolidated into one because it was felt that consolidation would be a much more effective way of handling these proposals.

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As I mentioned earlier, most of the proposals within this bill make it easier for the public and for business to deal with government, always keeping in mind the objective to reduce paperwork, to eliminate waste and duplication and to promote efficiencies in government services. The proposals in this bill free business from unnecessary rules and regulations that cost time and money. As everyone knows, rules that cost time and money are a burden, not just to business but to the people of Ontario. They prevent economic growth and can form a formidable barrier to job creation.

The bill also includes new protection for consumers and changes that would benefit community groups, and I'd just like to go through a few of the highlights of the bill if it's passed.

The Loan Brokers Act would be amended to strengthen the legislation to deal with unscrupulous loan brokers. Currently when loan brokers have violated the law and have charges laid against them, they can still operate their business. This amendment would allow a cease-and-desist order to be issued against them to prevent them from carrying on business.

The Sheep and Wool Marketing Act, not used since 1985 when the Ontario Sheep Marketing Agency was established, will be repealed.

A list of prescribed investments for trust funds will be replaced by a prudent trustee standard to allow more flexibility to invest funds and maximize income for beneficiaries.

Under the Ministry of Citizenship, Culture and Recreation, the Parks Assistance Act was made redundant by new land use planning guidelines and therefore will be repealed. Also at the Ministry of Citizenship, Culture and Recreation, section 12 of their act sets out regulation-making authority to establish financial systems programs, and that section will be repealed. The ministry has always had the flexibility to establish, revise and rescind grant programs without recourse to the regulations and has never established any financial assistance program under section 12. Therefore it makes sense to repeal that section.

Under the Ministry of Health, health sector appeal boards will be merged, hearing and review processes will be streamlined and procedures relating to complaints, discipline and appeal proceedings will be clarified.

Under the Ministry of Natural Resources, 11 forestry-related acts will be reduced to five and outdated legislation repealed to simplify and enhance forest protection.

In total, the Red Tape Reduction Act, 1998, includes amendments to more than 100 acts, many of them at the Ministry of Consumer and Commercial Relations. There

are quite a number under the Ministry of Consumer and Commercial Relations and too many to be able to itemize in these short moments. But the changes under the Corporations Act will allow not-for-profit corporations — those are corporations that would include hockey and bowling leagues, community centres and tenant groups, that type of corporation — other than charitable corporations to dispense with an annual audit if their annual income is less than \$10,000 and if all of their members consent to doing so in writing.

Under the Corporations Act, changes would allow mutual insurance corporations to hold annual shareholders' meetings within the first three months rather than the first two months of every calendar year. The change is being made because it takes approximately three months to conduct an audit. Therefore, it makes sense that they be given time to accomplish that audit. They would also be allowed to publish notice of the meeting and the annual statement in a local newspaper instead of mailing these documents to every policyholder. Again, that's subject to approval of the board and they still have the ability, if they want to mail it, to do that. It just allows a little bit more flexibility.

Changes to the Liquor Licence Act would eliminate unnecessary delays in the granting of a liquor sales licence while still maintaining regulatory control.

There would be changes to the Theatres Act to get films and videos into circulation faster.

As most of the members will know, most of the red tape bills that have come before the Legislature have, I think, achieved considerable success in eliminating regulatory provisions that no longer serve any useful purpose. A great deal of what's in this bill is the result of the Red Tape Commission under the direction of Frank Sheehan. I think the commission is doing a great job of looking at red tape and trying to make services better and more efficient for the people of Ontario.

We can't get away from rules and regulations, and oftentimes it's important that we do have them in place. They are necessary and desirable. What we have to do is be careful that when we put rules and regulations in place, they make sense and they're not there just to fill out a piece of paper and make life a little bit more complicated for people. The other thing is that what we don't want to do is put up barriers against efficiency and discourage people and organizations from achieving their true potential and creating jobs across this province.

The Red Tape Reduction Act, together with other measures, continues the government's fight to cut the stranglehold of unnecessary rules and regulations. Most of what is in this bill will be things that the Red Tape Commission has reviewed and said, "Yes, there need to be some changes there." A lot of the changes allow for flexibility to make changes to address the technological advances that are being made. A lot of them repeal acts and sections of acts that no longer exist or there is no need for any more.

It makes absolute sense, and I hope that we can get through these committee hearings and address this bill and

hopefully get it through third reading. I think some of the other members on the committee would also like to speak to the bill at this time.

**Mr R. Gary Stewart (Peterborough):** I'd like to speak to this bill. I'm probably, as I look around the room, the only member of the committee who is on the Red Tape Commission or is a commissioner. We've had some interesting dealings over the last three years on what has become a maze of red tape in this province. It has been getting larger and larger and more and more of it over the last 25 or 30 years. The statement "Time is money" probably describes red tape better than anything else. Certainly the mandate of our government is to create jobs and investment, and it makes it very difficult when you take a look at the barriers that have been put up in this province over the last many years.

Removing those barriers, which much of this legislation does, makes it easier, faster and less expensive for business to be conducted. Indeed, if business can be conducted more efficiently the jobs will emanate from that and the public will be better served. One of the things that has happened in this province over many years is that we have forgotten one very important thing, that is, customer service. The customers happen to be the people out there who pay the bills and who elect us and are called taxpayers. We have put every known obstacle that we possibly can in front of them over this past many years.

There are many examples of it. I can remember looking at one particular development that wanted to be done in this province, and after something like 12 years they finally got approval to do it. One locally that I can think of has been in the neighbourhood of about seven years getting the development put through because of red tape. They now have got to sell the property because they don't have any money left to develop it. That's the type of red tape that goes on.

If you look at some of these bills, one under Ministry of Consumer and Commercial Relations, one of the things that this bill does is it brings that ministry and some of the things suggested, being the Registry Act and certainly the Corporations Act, into the technology of today. I look at a couple of them. Under the Registry Act: to support electronic fund payments or other methods of payment. Why do we always have to do it the same old way? The Corporations Act: to permit directors' meetings by telephone. Amazing, that we have telephones these days. Why wouldn't we use them with less money and less cost for the people of the community and the province?

**1720**

One of the things we do in red tape, when we look at some of these things, is we have a little fellow who sits in a chair in the corner of the room. When we look at the red tape presentations and the acts that are in place now, or the proposals for them, we kind of refer to that little person in the corner and decide what effect red tape or proposed regulations or regulations that are in place now will have on that particular individual. It's surprising the effect that the red tape we have in this province now has on that.



**Mr Kormos:** Not if you don't let him out of the corner.

**Mr Stewart:** Not if we don't. But if we keep him up there and we have a direction to go, it is surprising what kind of good common sense decisions we will make on it. Again, I go back to customer service. The customer happens to be not only ourselves but the people of this province. Certainly, if you look at all of the suggested changes in this red tape bill, there is none of them that will not enhance business, that won't create jobs. They will make it easier to carry on business, will streamline administration, will improve customer service, will make it easier and less time-consuming to deal with all of the ministries involved and will simplify the process. How wonderful it would be if we could simplify a lot of processes that we do in this province. So I'm very supportive of this bill and I hope all members of the House on both sides will support it in the future.

**The Vice-Chair:** Is there anybody else on the government side who wants to say anything? If not, we'll turn to the opposition.

**Mr Bruce Crozier (Essex South):** I just have a few comments and I think my colleague Mr Colle is going to have some as well. Certainly, when it comes to red tape, generally, for the most part, we all agree that the less red tape, the fewer barriers that are put up, the better, be it for business, be it for anyone who is trying to access a government service. I've spoken a number of times that I think each piece of legislation that's proposed should have a sunset clause in it and at that time be reviewed. If the legislation is not doing what it's intended to do, it would be reviewed without question so that we then either could revise the legislation, reduce its impact and/or even eliminate them, as you have done in some of these cases.

It's interesting to me today just hearing the comments. I muse a bit about what has been said. Customer service: I agree 100%. Anything we can do to improve customer service from government is a goal we should all seek. The strange thing is that I think it was Mr Murdoch who introduced a resolution in private members' business a year or so ago that addressed customer service when it comes to voice mail on the telephone. It's interesting how technology can take a good thing and sometimes twist it into something that isn't so good.

I use an example: Just last week in trying to contact the Ministry of the Environment I made three calls and, lo and behold, got voice mail in every case. It was during regular business hours between the time of 9 until noon or 1:30 in the afternoon until 4, I think it was. Frankly, I don't know how many times I would have got voice mail had I tried any more, but after three times I simply said, "I'd best go on to something else." When we use technology we have to use it the best way. I think I'm not alone in this room in thinking that there is one use of technology that certainly builds frustration.

The recent series of property tax bills: You talk about red tape and about paper that we have to deal with. I need only remind the members of the committee that in attempting to improve the property tax system in Ontario,

the government had to make no less than four or five bills. I think that's an example that's a bit contrary to your objective of reducing red tape. It would appear to me that it has increased red tape. We're not here to debate those specific bills. I only use them as an example.

As was pointed out by Mr Kormos, the agenda of this committee, if you want to use an example of red tape: We're taking some six days over a period of two or three weeks to deal with a bill that you on the government side say is going to make life easier, and yet what do we do? We tend to take what should have been a relatively easy and straightforward hearing on a bill and made it much longer and, I suggest, more difficult than it should have been.

We should take to heart this objective of reducing red tape, of making it easier to access government, of making it easier to deal with government, to heart on everything that we do in every day of government.

**Mr Colle:** My colleague has mentioned one of the ironies of this whole thing here today. I don't think it's the fault of the chairman or the committee, but this is supposed to be about reducing red tape and making government more streamlined, yet we have the most convoluted, absurd schedule of witnesses. This could have all been done today, or in one or two sittings. They've stretched this over Monday, today; Tuesday the 29th; Monday again; Tuesday again. There's something here that doesn't really sound logical or doesn't feel right. I think Mr Kormos alluded to the cause of it. The government is playing another game and the game is basically to try and fill up these days that the committee has available to it so they'd block the potential debate over something the government doesn't want to talk about, and that's Ipperwash and the unfortunate death of Dudley George at Ipperwash.

The government is here talking about reducing and streamlining and making government more efficient. We're going to sit here for all these days and have people come from all over. If the government's serious about reducing red tape, they could at least get their act together and not have this stretched over so many days. That's the hypocrisy of this whole thing.

In terms of the bills themselves, there's a whole series of changes here. A lot of it is window dressing, as we know. There are some changes that are probably pretty functional that had to be done, but the government giveth and the government taketh. This is a massive bill which basically gives unprecedented ministerial power to impose more user fees. There are dozens and dozens of new user fees in this bill that the ministers will be able to do by regulation without any checks and balances, so we are giving the ministers more power independent of the consumer. We'll have no way of knowing that the minister is imposing all these new user fees and regulations. It's not only one minister. It's minister after minister who has been given more backroom power to impose user fees and make changes in ordinary people's lives.

As my colleague has said, if you look at what's happening to people's lives in Ontario over the business tax

confusion, we have now got the most complex, convoluted, confusing property tax system in the world right here in Ontario. If you want to do something about red tape elimination, I would love the red tape committee to look at our property tax mess. People in this province, especially small business people — never mind the residential homeowners — don't know what their tax bill is all about. It was a confusing situation with mill rates and assessments in the past, as you all know. Now we have five bills dealing with property taxes. Real estate professionals don't understand property taxes now, especially on commercial properties. Lawyers and accountants cannot figure out our property tax mess right now. It is so confusing and convoluted, is being amended. There was another amendment I guess announced today where they're going to have to extend the time allotted for appeals because some of the municipalities — the last day for appeals was supposed to be September 30. They got their tax bill the same day.

1730

There is a lot of red tape that is being thrust upon the people of Ontario that is a lot worse than the red tape that's being eliminated. A tax you can't understand is a bad tax. The people of Ontario do not now understand this new Mike Harris assessment system, tax system. It is impossible, and it's not just NDPers and Liberals who are saying that. These are Tories who are saying they cannot understand their pass-through on business occupancy tax. You're going to have to have a Bay Street law firm to understand how you can get your business tax from a tenant.

The tenants and landlords across this province are at war with each other because of the rash, absurd changes you made whereby the landlords are now tax collectors and they have no way of collecting taxes from a tenant who says: "I don't see the bill. It's not in my name; it's in your name." People are losing money hiring lawyers and accountants to collect a tax that the government is imposing, that the government thinks they should be collecting for them. It is a mess.

In Orillia there were people in the streets last week. The mayor of Markham doesn't know what to do now. Mississauga doesn't know what to do with this tax mess. That is what I call red tape that the government should be dealing with. These are mostly minor.

I'm glad there's a member of the Red Tape Commission here. I challenge him to take on eliminating the red tape mess that's been created in property taxation. It is a black hole, to say the least.

Also, in terms of customer-friendly service for government, which it's trying to do, what's happened here is that this government has now gone from eliminating red tape to imposing telephone tapes. You can't talk to a real person in this government. The ordinary citizen says, "Are there any real human beings working for the Ontario government any more?" Some of them have not talked to a real human being in a year. They can't get through the telephone tapes. It's one tape recording after another, after another. As members, our office has this problem; I'm sure even on your side you've got this problem.

The ordinary citizen is flabbergasted by the telephone tape game that's been thrust upon them. I wish the Red Tape Commission would have eliminated some of the telephone tape games that are being played. It is a way of obstructing the public's access to government. The public can't talk to real people, ask ordinary questions and or get a simple reply to, for example, "How do I get my health card?" You can't get a reply. It says, "Punch 1," and then once you punch 1 they say, "Would you like your services here or there?" Then they tell you after waiting about half an hour, "Come down to the city of Toronto to get your health card." Then you stand in line, you get your picture taken and you say, "Where's my health card?" "We can't give it to you because it's got to come from Kingston." Talk about modern electronic technology.

This is red tape that the ordinary citizen, the ordinary person, is really fed up with and is saying to this government, "Help make my life a little easier." Never mind the ordinary citizen. Can you imagine the small business person trying to figure all this out and trying to get information? It is most complicated. I don't want to say it's just the provincial government that's got this problem. We know that all governments have had this problem with getting away from the customer, but I say to you, you should talk to some of your ministers about eliminating this barrier. Almost all the ministries have imposed this telephone barrier between the public and the ministry and the people who work there. I would hope there'd be some initiatives in that. That would be really helpful in terms of getting rid of obstacles to customer service.

I would say also that one of the things I talked about in the House, which I thought this could have dealt with, is this whole area about natural gas brokers. Unscrupulous people have been going door to door for the last couple of years signing up people without their knowledge to a fictitious paper company and saying, "You are now going to receive natural gas service from this company." I've got a person who's been trying to get out of this for three years. He's gone through four different companies that he got signed on to. He's written to the minister. I've written. Telephone? You can't get through. He keeps on trying to find out, "How can I get out of this?" He's gone to see Consumers' Gas in person, saying, "I don't want to be part of this ABC company."

This is the type of protection consumers need so that they won't be used by these fly-by-night operators who set up these phony companies to sign people up. Then they show some other company that comes around to buy them out: "We've got 1,000 or 10,000 people signed up. Take my list." People are not getting protection from their government that way. The government has decided to stand back and say, "We'll try and do a little bit better for the gas broker scams," but there are all kinds of people who already lost in that gas broker scam who can't get out. They are so interwoven within these scams — these companies are selling and buying lists — that ordinary citizens can't get out. I wish they would have done something in this Bill 25 to allow people to withdraw from these companies that are essentially buying and selling



their rights without their knowledge and they can't extricate themselves. I find this very frustrating when I see people who have been trying to do this for three years.

This bill is part of an attempt to tell people we're trying to make things more efficient, but what I'm concerned about is that in the name of efficiency the bottom line of this bill is they've given too much power for my liking to ministers and the people you don't see and can't ask questions of. When they can set too many regulations and make too many changes, impose fees and regulations, I don't like that because I can't get at them. How can you get at them? There's no way of knowing who these people are, what their job descriptions are. They're never accountable. They never answer questions. They're making all these regulatory changes, and more and more of this regulatory power has been given to these unelected, faceless people in ministers' offices.

Opposition members certainly would never have an opportunity to question them, and I'm sure even government members will never have an opportunity until it's after the fact. If that trend continues, you're basically giving more and more executive power to unelected people. I know it's simple, because the life of the minister becomes easier and the minister then doesn't have to answer all these questions, but as government does that, you remove the proximity of the people from the people making the decisions.

It's wonderful if we could all work in a vacuum and government could work in a vacuum, but government that works in a vacuum basically becomes a government that's incompetent, corrupt and really not a government that is answerable. That's what happened in the Soviet Union. There was a separation between the people and the government, and you had a total collapse. That is the underlying ideological part of Bill 25 that I find very disturbing. It's giving more and more power to people who we will never see, never know their names or ever question. They can question us, they can yell at us and they can confront us as politicians, which is good, but these people will never be questioned or challenged for whatever decisions they make because you won't even know they did it until it's too late, and then you won't know whether it was them or not because they can easily hide behind the bureaucracy.

I wanted to use those as my opening remarks. Thank you for listening.

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**Mr Kormos:** I listened with great care to the comments made by Ms Ross, who is the parliamentary assistant, here speaking for the minister and for the government. I listened as well to Mr Stewart, who is a member of this Red Tape Commission. Look, we've got to deal with the proposition that these red tape bills, this included, are all about somehow creating jobs.

It's been interesting. The observations made to date: First you take a handful of these amendments and find out that what they do is to relieve the ministry of the requirement to go through regulation to set fees and to allow the minister to establish fees by fiat. Now, I appreciate that

the regulations committee is dominated by government members and inevitably a new fee structure is approved, but you have got opposition members on regulation committees, insofar as I'm aware. It's been a long time. I recall the regulation committee as a place of punishment. If you'd really slipped to the bottom of somebody's pecking order you got sent to the regulations committee. You know exactly what I'm talking about. But at least you had some public overview there and at least you had the requirement that they be published in the Gazette.

What you've got here, and this is carrying on from what other members of the opposition have said this very afternoon, is the power to generate new fees without there being any need to subject them to the scrutiny of a tripartisan committee and without there being any need to publish them. You can just generate new fees by fiat left or right, helter-skelter. It's a fascinating piece of legislation, this Bill 25. The government had better be very careful.

For instance, creating jobs: I read the Sheep and Wool Marketing Act. I pulled it out of the RSOs. The fact is that the repeal of the Sheep and Wool Marketing Act, to be fair to the commentators, doesn't create one new job, doesn't relieve any burden on anybody, doesn't create any new financial interest, but it's because the statute had become stale, had become obsolete.

What's interesting is that there's a whole bunch of amendments here but there's two complete acts, and I hope people have looked at those, schedule C and schedule J. I know you've read schedule C, Chair; I know you have. Schedule C gives the power to legislative counsel. Previously, every 10 years the Legislature had to pass a statute called the Statute and Regulation Revision Act which gave a legislative counsel commission the power to examine all statutes and to clarify them. As well, it empowered them to omit statutes from the RSOs that are not of general application or that are obsolete. You see, schedule C basically duplicates that act, and rather than having to pass it every 10 years, it is passed once and for all. We don't need the Red Tape Commission once schedule C is passed because legislative counsel has the power to repeal statutes that are redundant or that are obsolete or that no longer have currency. It gives very clear, specific power to repeal or revoke statutes, regulations or provisions that are obsolete or are spent or have no legal effect.

This is a bunch of hogwash. What the Red Tape Commission did was collect those statutes submitted by ministries that normally, come 1999, would have been submitted to legislative counsel and its commission in anticipation of preparation of the RSOs. Do you understand what I am saying? Talk about pulling the wool over your eyes. This is a load of crap.

Now, there are some dangers involved, though, because there is the Jerry Springer amendment in here.

**Mr Colle:** Where is that?

**Mr Kormos:** Wait a minute. You've got to read these bills. That's the amendment to the Marriage Act. I frivolously call it the Jerry Springer act because what it

does is repeal the form to the act that sets out the relationships by consanguinity which bar marriage. It anticipates that there will be a regulation passed to set out the same or similar relationships. If that regulation isn't passed, I tell you, it's going to be the Jerry Springer show. Bizarrely, this government is repealing the section of the Marriage Act which precludes people in certain relationships from marrying each other. Why in heaven's name they'd want to do that I have no idea. At least down in Welland-Thorold it's not obsolete. I can't speak for other parts of the province or for other members.

This is particularly in reference to schedule C as the reason for the amendments. You know, Ms Ross, why there's a need to amend the Bulk Sales Act, don't you? When legislative counsel did the Revised Statutes of Ontario in 1990, legislative counsel, pursuant to the statutes of Ontario act, 1989, forgot to include that section even though it had been passed in the original legislation. At least when you've got the statutes revision act, every 10 years you have Parliament considering the process. With schedule C, the Statute and Regulation Revision Act, there is no longer a decennial consideration of statutes passed in the previous 10 years so that they can be re-reviewed with a view to finding errors like the error that was made in RSO 1990 under the Bulk Sales Act.

The other interesting statute here is schedule J. I know that's the last one, but I know you read the whole bill and I know you reached schedule J. Schedule J repeals the act which creates the policy and priorities committee of cabinet. The policy and priorities committee exists by virtue of statute and it is considered the committee of the executive branch. Repealing that is a very interesting proposition, because P and P acted as a buffer, a continuum, a nexus between caucus and cabinet, if there ever is a nexus between caucus and cabinet — a whole lot of backbenchers would consider that to be unlikely — but certainly between cabinet and the Premier. P and P was, among other things, the court of last resort for a cabinet minister who wanted to drive a particular policy agenda. He or she might have it resurrected or revived in P and P.

Schedule J in this bill repeals the act which creates the policy and priorities committee. That is a very dangerous proposition. That suggests that not only is the backbench irrelevant when it comes to the Premier's office, but that the cabinet is irrelevant as well with the abolition of the committee of the executive branch, because the Premier is a *prima facie* or *de facto* — what do they call it? Please, staffers, what do they call it when by virtue of your office — *ex officio*. Am I right on that? The Premier is an *ex officio* member of P and P. I'm pretty sure, as I recall the statute, that the Premier is a member of P and P. It's not silly stuff. It's a very interesting thing that this government would repeal the policy and priorities committee. It indicates what a whole lot of people and a whole lot of pundits have written about and suspected, that the real operation of this government isn't from within cabinet office or even the Premier's office, but from far outside the Premier's office. Why else would you abolish P and P?

Go down the list. You've got a whole whack of amendments here which take away the regulatory requirement to establish new fees and put it solely in the hands of the minister, where it can be done secretly without any overview or oversight by anybody. How does that create jobs? Not one, nada, zero, zip. You've got a whole bunch of statutes that would have been repealed in any event by legislative counsel come 1999-2000 because they were obsolete, no longer with currency. You heard the definition I read to you a little while ago etc, that the legislative counsel has power simply to exclude from the RSOs. I'm not sure very many people understood the incredible power. Legislative counsel can change the wording of legislation. Under the old revision of statutes legislation it was every 10 years, and now under this fixed legislation it's permanent, the revision of statutes and regulations. Legislative counsel has incredible powers. No creation of jobs there.

I'd like to know how assigning to deputy ministers or ministers the power to make appointments as compared to delegating or requiring that power to be exercised by the Lieutenant Governor in Council creates any jobs. Mind you, it avoids — what does it avoid, Chair? Think about it for a minute. When you've got the minister himself or herself or the deputy minister making appointments — we have a very special committee here that may not have a great deal of power, because it's dominated by the government, but at least it has a public airing of some of the personalities who enjoy governmental appointments. The name of it is the agencies, boards and commissions committee. When you remove appointment power from the Lieutenant Governor in Council and give it to the DM, bingo. When you look at motive, what you permit is the secret process, the secret selection, the good old days of pork barrelling that we've seen a revival of in this province over the course of the last two and a half years in terms of appointments with no public scrutiny, regardless of how modest that scrutiny might be.

#### 1750

I acknowledge matters like electronic filing, although it scares the daylights out of me, because I saw the experiments — and again, they didn't come from this government; these things have been in the works for a number of years. I know that. They have their origins within the ministry bureaucracies that are obsessed with high technology and are wined and dined by the sellers of high technology and as often as not bamboozled by them. But I'm scared to death of the absence of integrity in the whole system of electronic filing of, let's say, writs and other court processes.

Yes, a few favours to the corporate world and corporations, but as I had to explain to these folks when with great hurrah they eliminated the annual filing fee of — how much was that, for business corporations? Remember, friends? The annual filing fee was reduced or eliminated. I had to point out that small businesses in this province, real small businesses, the kind that I grew up in, the kind that my grandparents ran and my parents ran and the kind that prevailed in the communities I represent and



live in, aren't incorporated. You're talking about small business. I'm talking about real small business, bona fide small business, that tends not to be incorporated. They're talking about operations with 20, 25, 30 non-union employees. I'm talking about mom-and-pop operations. I know for a fact that you know exactly what I'm talking about. They tend not to be incorporated. They don't file annual returns in any event.

Yet let me tell you where they got whacked. I was just at a meeting of Niagara regional council, that got hit for over \$18 million in new taxes. As a result of the downloading and as a result of the reassessment, speedily done in the course of less than a year when the experts all told the Premier that it should have taken at least three years, you've seen major shifts of new business taxes, especially in a community like Niagara-on-the-Lake. I know that specifically because they were there with the overhead charts and talked about new businesses. Small mom-and-poppers: That little restaurant whose taxes went up by over \$9,000 to in excess of \$24,000, the little soda stand in Niagara-on-the-Lake, isn't incorporated. The lady who owns that doesn't give a tinker's damn about being able to hold board of directors' meetings over the phone. She got hit for \$9,000 in new property taxes because of Al Leach's current value assessment.

This doesn't create jobs. This is so redundant. As has been pointed out by Mr Colle and Mr Crozier, among others, this is the red tape, because the obsolete bills would have been taken care of by legislative counsel anyway by virtue of the decennial revision of statutes act. All it does is clear them from the books. Otherwise, they simply don't get used.

This creates new powers for ministries that prohibit and prevent public access to information and public oversight and it provides some modest relief for the corporate world when in fact the real small businesses of this province, I'm convinced, don't have corporate lawyers and corporate auditors. They're lucky if they've got a few bucks in the bank at the end of the week, after paying the mortgage and paying their taxes and after they've paid maybe the one or two part-time staff they've got on a weekly basis, to pick up food for their own homes. So let's not talk about job creation, not with this. Far from it. This is a scam.

Consumer protection? I tried to call the cops a month and a half ago. There was a set-up in London — I drove

out there — a motor vehicle repair shop that was ripping off its customers and it hadn't posted the mandatory signs under the legislation. I was going to burn him. I was going to turn him in. I was going to rat him out. I called the ministry. I said: "I need the cops. You've got to bust this guy. He's scamming people in London. I got a phone call so I went down there and inspected the place." I did it undercover. I wasn't in a suit, right? It's true. I got put on voice mail and voice mail and voice mail. Finally, somebody answered my phone who is the director of investigations. I said, "What about investigators?" She said, "No, I'm it." The director of investigations is all the investigators. I said: "I want to bust this guy. I've got the goods on him. I was there. He hadn't posted the proper material under the Motor Vehicle Repair Act." "Oh, let's do conciliation, perhaps in a few months' time." I don't want to conciliate with the guy. He's ripping people off. I want him shut down.

There is no consumer protection. Mrs Ross, the ministry has been gutted. It's like calling 911 and getting busy signals or getting elevator music. The ministry has been gutted. I've tried it, and I've tried it more than once. They're not all busting the people they should be busting. Take a look at the correspondence you're getting on scams like the natural gas scams or roofing scams or basement scams or asphalt scams, and take a look at the form letters the ministry sends out: "Oh, not in our bailiwick," or, "You can submit for arbitration or conciliation." A pair of seniors who have been skimmed, scammed, skinned for \$10,000 for a rip-off roof don't need conciliation; they need their money back. The ministry simply can't do it any more because it doesn't have the capacity, doesn't have the staff, doesn't have the investigative staff and it doesn't have the desire any more.

I think my time is up, Chair.

**The Vice-Chair:** It is.

**Mr Kormos:** We'll have more to say as we go on through the balance of these hearings.

**The Vice-Chair:** I'm sure you will.

**Mr Kormos:** Third reading will be a treat.

**The Vice-Chair:** Thank you. This brings to a conclusion the hearings for today. We'll stand adjourned until Tuesday the 29th at 5 pm.

*The committee adjourned at 1757.*





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Tuesday 29 September 1998

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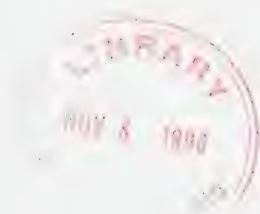
Lundi 29 septembre 1998

## Standing committee on administration of justice

Red Tape Reduction Act, 1998

## Comité permanent de l'administration de la justice

Loi de 1998 visant à réduire  
les formalités administratives



Chair: Jerry J. Ouellette  
Clerk: Douglas Arnott

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Tuesday 29 September 1998

Lundi 29 septembre 1998

*The committee met at 1700 in room 228.*RED TAPE REDUCTION ACT, 1998  
LOI DE 1998 VISANT À RÉDUIRE  
LES FORMALITÉS ADMINISTRATIVES

Consideration of Bill 25, An Act to reduce red tape by amending or repealing certain Acts and by enacting two new Acts / Projet de loi 25, Loi visant à réduire les formalités administratives en modifiant ou abrogeant certaines lois et en édictant deux nouvelles lois.

ONTARIO MUTUAL INSURANCE  
ASSOCIATION

**The Chair (Mr Jerry J. Ouellette):** I call this committee to order. I'd like to welcome everyone here today to the standing committee on administration of justice for hearings on Bill 25. I welcome all the guests who are here.

I see our first guests have come forward. If you could identify yourselves for Hansard, we'd greatly appreciate it. Just so you know, there is a total time allocated of 15 minutes for presentation. At the conclusion of your presentation, the time remaining is divided equally between the three caucuses. You may begin.

**Mr Rick Walters:** Good afternoon. My name is Rick Walters. I'm the chairman of the Ontario Mutual Insurance Association and also the manager of the Lennox and Addington Mutual Fire Insurance Co in Napanee.

**Mr Glen Johnson:** I am Glen Johnson and I am the president of the Ontario Mutual Insurance Association and manage the association's office in Cambridge.

We appreciate the opportunity of supporting Bill 25, the Red Tape Reduction Act, 1998, and in particular the sections of the bill which pertain to the provincially registered mutual insurance corporations.

This brief is presented on behalf of the members of the Ontario Mutual Insurance Association, commonly referred to as the farm mutuals. A listing of our members is provided on page 2 of our presentation. Most farm mutuals have been in operation for over 100 years. These companies were formed in farming communities in the mid-1800s, primarily to provide a mechanism of protection against fire losses. Ontario's farm mutuals now collectively rank 10th in premium volume in the province and provide most types of property and casualty insurance,

primarily to rural and small-town Ontario. While the niche market continues to be farm insurance and directors of farm mutuals tend to be farm operators, farm mutuals now provide insurance to large numbers of residential, commercial and automobile insureds.

In total, approximately 250,000 policies are in force. The largest farm mutual is Farmers' Mutual (Lindsay), which has over 35,000 policies. The smallest is Amherst Island Mutual, with less than 500 policies. An average farm mutual has between 4,000 and 5,000 policies.

On behalf of its members, the Ontario Mutual Insurance Association has asked the Ministry of Consumer and Commercial Relations to make amendments to the Corporations Act which would:

(1) Amend section 159(1) such that mutual insurance companies are permitted to hold annual meetings within the first three months of the year instead of the first two months.

(2) Amend section 161(1) such that mutual insurance companies are able to publish the notice of the annual meeting in local papers instead of mailing the notice to every policyholder.

(3) Amend section 161(3) such that mutual insurance companies are able to publish their annual statements in local papers instead of mailing a copy to every policyholder.

Reasons for change:

**Time of annual meeting:** A two-month time period in which to hold an annual meeting may have been appropriate when mutual insurers were smaller, less complicated business entities. Holding the annual meeting within two months of year-end is becoming more and more difficult for farm mutuals, especially large farm mutuals. The two-month time limitation is not imposed upon federally licensed insurers or other corporations. In fact, other corporations without share capital which are regulated under the Ontario Corporations Act are allowed to hold their annual meetings within three months of their year-end. Federally regulated mutuals are afforded six months.

**Notice of annual meeting and annual statement:** Currently, mutual insurance corporations are required to advertise the notice of the annual meeting in local newspapers and mail a notice to every policyholder. Seven days' notice is required. In addition, the annual statement must be mailed to every policyholder at least seven days before the annual meeting.



While these requirements may have been appropriate when first implemented many years ago, we believe they are somewhat excessive in today's business environment and result in unnecessary cost, which must be passed on to consumers. Farm mutuals have become larger and more complex organizations and rules and guidelines for production of financial statements are such that these documents are now lengthy. They usually take the form of a small booklet with extensive notes which are not easily produced in leaflet format any longer. Assuming bulk mail could be used, the unit cost to print, assemble and mail an annual statement can range from 75 cents per statement for the largest companies to about \$1.20 per statement for smaller companies. In addition, Canada Post has recently challenged the eligibility of annual statements for bulk mailing rates.

We believe it is important that the notice and annual statement be publicized through local papers. This seems to be the norm for other community organizations. Naturally, any policyholder who requests an annual statement should be provided with one. We feel that mailing to every policyholder can be wasteful and should be left to the discretion of the individual farm mutual.

Other supporting considerations:

(1) Our membership is very supportive of these recommendations. Every member company, with the exception of one, has confirmed this by way of a signed declaration from the board chairman. In addition, every member company has confirmed that the changes could not be implemented until the company bylaws are amended to reflect these changes. Before bylaws can be changed, every policyholder will receive a notice of the change.

(2) The requested changes would not prevent or impede any farm mutual from continuing to mail annual statements to every policyholder and hold their annual meeting before the end of February if the farm mutual chose to do so.

(3) Sections 158 through 173 of the Corporations Act apply only to provincial mutual insurance corporations. All of these companies are within the OMIA membership and have been consulted.

(4) We have written to the superintendent of the Financial Services Commission of Ontario, formerly the commissioner of insurance, and have received confirmation that our recommendations are acceptable, with the proviso that farm mutuals continue to provide the Ontario Insurance Commission with the financial reports that are used for regulatory purposes, ie, the Ontario P&C1 form, by February 28. This is acceptable to our members.

(5) Farm mutuals tend to operate in a small number of communities and maintain close contact with policyholders. We anticipate that, if the requirement for mailing of the full, formalized annual statement is removed, and financial statements are published in local newspapers, most farm mutuals will continue to provide highlights of the financial statement in a more user-friendly format along with other company news in promotional brochures or policyholder newsletters. Such communications may be combined with other promotional activities and/or tailored

to specific segments of their policyholders, eg, farmers, homeowners, auto insureds and so on.

(6) Individual members of the Ontario Mutual Insurance Association have been requesting the changes described for well over 10 years. We recognize that these changes are not substantive enough to warrant amending the Corporations Act on their own. We feel that the red tape reduction process presents an excellent opportunity for these changes to be made.

The requested changes to the Corporations Act will remove unnecessary red tape for Ontario's mutual insurance companies resulting in reduced operating costs which will ultimately be passed on to consumers in our highly competitive marketplace. We urge you to proceed with the passage of Bill 25.

**The Chair:** Thank you very much for your presentation. That affords us approximately two minutes per caucus. We begin with the official opposition.

**Mr Bruce Crozier (Essex South):** Thank you, gentlemen, and welcome. I certainly understand, appreciate and support the reasons that you've given today for the changes as you see them.

A question: How likely is it that a mutual insurance company, for example, the Kent and Essex, will sell insurance coverage in a broad geographical area, ie, Collingwood-Cornwall?

**Mr Walters:** I would say that's quite highly unlikely, due to the cost of servicing a policy that far away.

**Mr Crozier:** So when you say you would publish in local newspapers, I expect that you'd cover most of your policyholders within a much smaller geographical area.

**Mr Walters:** That's correct.

**Mr Crozier:** When you say the financial statements usually take the form of a small booklet, how would you publish this in a local newspaper? If it's too difficult to condense for a policyholder, would it not be too difficult to condense for a local newspaper?

**Mr Walters:** What generally happens is the financial statement is put together in a booklet form so that it can fit in a normal-sized envelope. The main ingredients of the financial statement could be put on a full-page ad in a newspaper and fit quite readily.

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**The Chair:** We move to the third party.

**Mr Tony Martin (Sault Ste Marie):** I am just wondering, in putting together this set of amendments, did you consult with the actual policyholders who would receive these notices as to how they felt about the changes that you're asking for?

**Mr Walters:** At this stage the individual policyholders would not have been consulted. Our board of directors is elected by the policyholders, and before any of our bylaws can be changed to allow us to do this, the bylaws would have to be changed at an annual general meeting and all the policyholders would be given notification of the change and the date and time of the annual meeting to attend and voice their opinion at that time.

**Mr Johnson:** We did a survey of all the member companies and confirmed that each one would have to change

bylaws as well. Through the notice of the annual meeting and the description of the bylaws to be changed, every policyholder would get notice, essentially.

**Mrs Lillian Ross (Hamilton West):** I just want to ask you about the difference between the two months and the three months, how that's going to impact. What's the difference and why do you need it changed?

**Mr Walters:** We're finding as the requirements for the auditors are increased, the length of time for them to conduct their audit increases. It does get quite cramped in there sometimes, trying to get the auditors in and out and produce the document. Then of course we have to take it to a printer and have it reprinted and bring it back to the office and stuff the envelopes.

**Mr E.J. Douglas Rollins (Quinte):** Welcome. Coming up from Napanee, it's not our riding but it's awfully close. Thanks for coming in. Last winter we had a substantial ice storm in eastern Ontario. Was that a major loss to many mutual farm companies in that area?

**Mr Walters:** Yes, it was. Last I heard, the farm mutuals that were hit consisted of the Bay of Quinte Mutual, head office located in Picton, and Lennox and Addington Mutual in Napanee and the companies east. So far I think the gross claims incurred by the five or six farm mutuals in eastern Ontario is about \$11 million or \$12 million.

**Mr Rollins:** A pretty substantial amount of cost to you people for one storm.

**Mr Walters:** Yes. We also own our reinsurance company. It was the first Canadian-owned reinsurance company. We buy catastrophe reinsurance that protects us and we have the backing of all of the other mutuals in Ontario in a situation like that, and that's how it works.

**The Chair:** Thank you very much for coming forward today with your presentation. We very much appreciate that.

#### CANADIAN ENVIRONMENTAL LAW ASSOCIATION

**The Chair:** We call our next presenter forward, the Canadian Environmental Law Association. If you could identify yourselves for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Mr Paul Muldoon:** My name is Paul Muldoon. I'm the executive director of the Canadian Environmental Law Association, and with me is Theresa McClenaghan, counsel at the association.

The Canadian Environmental Law Association is a public interest group founded in 1970 to use and improve laws to protect the environment and conserve natural resources. We represent groups and individuals throughout the province under a legal aid mandate. We carry on community education and law reform activities.

We also have a general interest in issues pertaining to public access to environmental decision-making and ensuring transparency and accountability of government decision-making, and that's the issue we'd like to speak on this afternoon. In particular, we'd like to comment on

schedule C to Bill 25, which is the proposed Statute and Regulation Revision Act, 1998. Bill 25 is the Red Tape Reduction Act, 1998, but schedule C is the one we'd like to comment on.

We'll be writing a detailed submission on schedule C for your consideration, as well as written submissions on schedule I to the bill dealing with the amendments and repeals proposed by the Ministry of Natural Resources. In particular with schedule C, though, we have some very serious concern about the way the bill is drafted and organized.

If I just read you the pertinent section of clause 2(1)(c) of schedule C, it states that "the chief legislative counsel may make changes that are necessary to clarify what is considered to be, in the case of a statute, the intention of the Legislature."

In our view, this is a broad unwieldy power, whereby an unelected official gets to change the intent of a statute by way of clarification. In our view, there is no analogous power, federally or provincially, for this type of power, and although it may be used for expediency in routine matters, there are constitutionally valid ways to do this and achieve the objective efficiently. Since in our view the act is worded inappropriately, it could lead to serious problems of constitutionality.

If time permits, we'll go through some examples of what the practical implications may be. In the meantime, I'd like my colleague Theresa McClenaghan to respond to some of the legal issues that this provision raised.

**Ms Theresa McClenaghan:** Paul has mentioned that the concern with schedule C is its approach to revision. We're assuming this Statute and Regulation Revision Act is intended by the way it reads to deal with fairly routine amendments. We're also assuming there is a need for that, that there is a need for some expeditious way of dealing with routine amendments. Our concern, however, is that when you read this statute, the process on its face is that the chief legislative counsel drafts the amendment and, as Paul points out, some of the provisions are fairly broad in terms of what they can do, and the one about clarifying intent is particularly of concern.

After that, when you read the statute, you'll see there is a provision in section 3 that the chief legislative counsel reports to the Lieutenant Governor in Council that a statute has been revised and the Lieutenant Governor in Council may cause a copy of the revised statute, signed by the chief legislative counsel, to be deposited in the office of the clerk of the assembly as the official copy of the revised statute. Then there is provision that it is enforced on a day to be named by proclamation and not earlier than the date that it's published. Nowhere in this process is there provision for introduction of the revisions contemplated to the Legislative Assembly. Nowhere is it contemplated that there's an opportunity for debate, for any sort of parliamentary democracy to be at play.

Now, if the revisions are only clerical, only typographical, why would that be of concern? That would obviously be of less concern if they were only clerical or typographical. But when you read the whole list of what can be done



in (a) through (j), you can conceive of situations where reordering, renumbering, clarifying intent, using different language, repealing, revoking statutes, all those things that are mentioned may have substantive import, intended or not. In our view, that's contrary to the requirements as to how legislative revision is to be carried out under the constitution and under the rule of law in Ontario.

Our concerns are:

(1) That the proposal is unconstitutional, because it takes the legislative responsibility away from the legislative branch and places it in the hands of the executive.

(2) That the act contravenes the rule of law; that legislating is so fundamental an activity that it's the Legislature that must carry out that activity.

(3) That the proposed act offends rules of parliamentary democracy, from the inception of this province forward.

(4) That it's unprecedented and not the way statute revision has normally been done, whether you look at Ontario or other jurisdictions.

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Assuming that the intent is to come up with an expeditious way of statutory revision, and assuming that there is a need for that, which we can grant, there are appropriate ways to do that which would be constitutional. An example is found in the 1989 statute, and I think we have copies of that, which dealt with a slightly different issue but is illustrative of the point, that being the 1990 Ontario statute consolidation. When you read that legislation you'll see some similar language, but the point is that it was introduced as a bill in the House, opened to debate, went through first reading, second reading in committee, third reading and a vote. It was specific. It dealt with the revision and consolidation particular to the 1990 revision, and it was executed by the legislative branch, which then delegated some of the administrative functions to the executive.

Another example: If the concern is to come up with an ongoing ability to consolidate, revise and correct statutes, then another interesting precedent is the federal statute, and because it's fairly lengthy we only have one copy of that. There was obviously a perceived need at the federal level to do this kind of thing, so they enacted something called the Statute Revision Act in 1974, 1975, 1976. That provides for the ongoing ability to revise statutes in similar circumstances to deal with routine amendments. A couple of important distinctions: That legislation more narrowly and more specifically describes the power of amendment to use words like, for example, "minor amendments" and "with no substantive difference in the import."

Second, it provides that once there's a determination that there's a need for revision, those revisions are to be approved by the appropriate committee and then put in a bill for Parliament. They may deal with a number of different things at one time, and that's not the problem here. The point is that they would take all those needed amendments, have the appropriate legislative oversight and then give them to Parliament for review and approval.

In my view, that would be a constitutionally acceptable way of going about legislative revision.

The fundamental concern here is not with perhaps the underlying objective which we're reading into this statute — the need for expeditious amendment and correction of errors that might have slipped through the process — but rather to ensure that it's constitutional and carried out by the legislative branch.

**The Chair:** Thank you very much for your presentation. That's approximately two minutes per caucus, and we begin with the third party, Mr Martin.

**Mr Martin:** I have no questions. Thank you for coming.

**The Chair:** We'll move to the government members. Mr Stewart?

**Mr R. Gary Stewart (Peterborough):** Yes, I'd just make one comment. Your comments sound like a whole bunch of red tape to me, and I don't mean that disrespectfully, in any stretch. What we're trying to do is cut down on red tape, and what you are telling me — if I gleaned a little bit of it, and you had me pretty confused. That's one of the reasons why we're pushing to make some changes and get rid of all the red tape.

**Ms McClenaghan:** The fundamental point here is that legislative process itself is not red tape and there are ways to expedite those revisions, as described in a couple of the other examples, without being unconstitutional. But you can't actually give away your right to make laws, and that's what's happening here.

**The Chair:** We move to the official opposition, Mr Crozier.

**Mr Crozier:** I think you've made some excellent points. I'm not a lawyer, therefore it scares me a bit, what you've said, for the Legislature to give away its democratic right. When you mentioned parliamentary democracy and listed a number of concerns with respect to that, I have to say it's strikingly similar to a lot of things that have gone on in this Legislature in the last three years where parliamentary democracy has been thrown to the wind. That scared me as well.

I agree with your point and explanation just a moment ago that the Legislature itself is not red tape. I agree with you 100%. It's our responsibility to minimize the red tape with the legislation we produce. I think your point is well taken and I'm certainly going to want to get your comments from Hansard. You may hear them repeated in the Legislature in third reading debate on this bill.

**The Chair:** Thank you very much for coming forward. We appreciate that.

## URBAN DEVELOPMENT INSTITUTE/ONTARIO

**The Chair:** We call the next group of presenters, if members or a member of the Urban Development Institute could come forward.

Good afternoon, and welcome. If you could identify yourselves for Hansard we'd appreciate it. In the event you did not hear earlier on, there's total time allocated of

15 minutes. At the conclusion of any presentation you may have, your time is divided equally between the three caucuses. You may begin.

**Mr Jeff Kratky:** Thank you, Mr Chairman. My name is Jeff Kratky and I am a director of policy for the Urban Development Institute/Ontario. With me today is Mr Reg Webster, president of the firm G.M. Sernas and Associates, a firm of consulting engineers and land use planners who are active throughout Ontario and also one of UDI's member companies. Reg is in fact a member of our board of directors and appears as such on your agenda.

Thank you for the opportunity to appear before you today regarding schedule I of Bill 25, the Red Tape Reduction Act, to provide you with the comments and thoughts of our institute from the land developer's and owner's perspective. Schedule I is the amendments and repeals proposed by the Ministry of Natural Resources in order to reduce red tape. In particular, UDI wishes to address the Conservation Authorities Act amendments, Lakes and Rivers Improvement Act amendments, Surveyors Act amendments and Surveys Act amendments.

Also, the committee should be aware that our submission to the Ministry of Natural Resources did address the proposed amendments to the Forestry Act, although we will not be specifically addressing any comments to you at this time.

I wish to begin by stating that the Urban Development Institute/Ontario is here today in support of the government's proposed amendments that carefully balance the needs of all people of Ontario while responding to some very significant needs of the land development and real estate industry. We believe that the balance will allow both the sustainable management of Ontario's natural resources at the same time as economic and job growth continue to be facilitated by this government and our industry.

Before providing you with additional detail regarding our support for Bill 25, I wish to provide some background to this presentation for the benefit of this committee by briefly describing the role of the Urban Development Institute/Ontario and the nature of its membership.

The Urban Development Institute/Ontario, or UDI, has acted as the voice of the real estate development, building and property management industry in Ontario for over 40 years. The institute is a non-profit organization supported by its members, which include firms and individuals who own sizeable holdings of raw land, apartment units and both industrial and commercial buildings. Our membership is engaged in all aspects of the planning and development of communities and the construction of residential, industrial, commercial and retail projects. UDI serves as a forum for knowledge, experience and research on land use planning and development.

Today, UDI's members include land developers, builders, land use and environmental planners, investors, financial institutions, engineers, lawyers, surveyors, economists, landscape architects, marketing and research firms and architects. Together they constitute the collective

forces guiding the creation and improvement of Ontario's built environment. Further, the institute is a partner in UDI Canada, the coast-to-coast organization representing the national interests of the development community.

The land development and construction industry is a very important part of Ontario's economy, contributing more than one tenth of its total economic output. Unfortunately, despite the importance of this industry in helping this government to get Ontario back to work, the industry continues to be one of the most overregulated and overtaxed.

#### 1730

In response to that burden, the Urban Development Institute/Ontario called for numerous reductions in red tape at the time that this government was elected on a platform that Ontario should be open for business. Many of the government's initiatives have moved the province towards that goal, although there is still some way to go, and UDI is confident in saying that Bill 25, if proclaimed, will be an addition to those initiatives.

However, the institute clearly understands that economic health must be pursued in harmony with the health of the natural and social environments. Ontario's high quality of life depends on all three being managed in a sustainable fashion. We believe that Bill 25 strikes that balance.

The public consultation and facilitation of discussions undertaken by both the red tape secretariat and staff of the Ministry of Natural Resources were instrumental in finding that balance. The Urban Development Institute/Ontario would like to express its thanks via this standing committee directly to Rob Messervey of the ministry and Frank Sheehan, MPP and leader of the secretariat.

I now wish to address the specific comments of support from the institute for schedule I of Bill 25 to the standing committee.

UDI believes there is a need in the Conservation Authorities Act to clarify the relationship of jurisdictions for municipal review under the Planning Act and the agency review performed under the Conservation Authorities Act. In the past, the distinctions have blurred, causing our industry to be subject to unnecessary duplication, red tape, cost and delay. Section 12 of schedule I of Bill 25 provides a new section 28(5) of the Conservation Authorities Act that we believe will appropriately distinguish those areas of jurisdiction.

Secondly, the public, including members of the Urban Development Institute/Ontario, has not thus far had guarantees of consultation and an opportunity to appeal the actions of Ontario's conservation authorities. Section 21(a) of the current Conservation Authorities Act provides an authority with the "power to study and investigate the watershed and to determine a program whereby the natural resources of the watershed may be conserved, restored, developed and managed." UDI believes the significance of this power is similar to that of the municipalities under the Planning Act, where Ontario has historically recognized the importance of public input and given the public such rights. It is as important to include public consultation and



appeal mechanisms in the Conservation Authorities Act as it is in the Planning Act. We congratulate this government for including the public's rights of consultation and appeal in Bill 25.

Thirdly, UDI supports the government's initiative through Bill 25 to create a single regulatory set of standards across Ontario. We believe the standards of the generic regulation will provide certainty that will ensure that best natural resource management practices exist in all areas, as well as reducing red tape on our industry.

Further, the institute wishes to offer support for section 30 of Bill 25, which would amend the Lakes and Rivers Improvement Act section 15(1). We believe the proposed section will allow for the development of a one-window permitting approach at the conservation authorities. This change will significantly reduce overlap that now occurs and costs our industry time and money. It is also likely that it will better manage our natural resources, since one agency would be responsible to understand an application in its entirety.

Finally, UDI supports shifting the responsibility for developing procedures and standards for surveys from the Ministry of Natural Resources to the Association of Ontario Land Surveyors. The association has already demonstrated its ability to consult stakeholders and the public through its ongoing development of a deferred monumentation procedure.

In conclusion, the Urban Development Institute/Ontario believes the Bill 25 reforms balance the needs of natural resource management in an environmentally responsible manner with this government's and our industry's goals to promote economic and job growth in Ontario. Bill 25 accomplishes this balance after a thorough public and stakeholder consultation, for which UDI congratulates the red tape secretariat and the Ontario Ministry of Natural Resources.

I wish to quickly reiterate the reasons for our industry addressing its support of Bill 25 to this standing committee.

(1) Bill 25 proposes amendments to the Conservation Authorities Act that (a) improve public accountability; (b) clarify jurisdictions and the relationships between approval authorities under both the Planning Act and the Conservation Authorities Act; and (c) create consistent standards across Ontario for the protection and review of land development impacting natural resources.

(2) The proposed Red Tape Reduction Act, 1998, amends the Lakes and Rivers Improvement Act to maintain environmental quality while allowing for a one-window approach to receiving land development applications.

(3) The devolution of responsibility for standards and procedures for surveying from the government to the surveyors allows for the establishment of new approaches beneficial to land developers and owners as well as individual homeowners.

Thank you for your attention. Both Reg and I would be pleased to answer any questions that you may have regarding UDI's support for Bill 25.

**The Chair:** That allows each caucus approximately a minute and a half. We begin with the government members.

**Mrs Ross:** Thank you very much for your presentation. Can you tell me, with respect to the regulations and requirements that conservation authorities use relative to the timing of approval, how that has affected your industry?

**Mr Reg Webster:** As it relates to the proposed act, or as it is today?

**Mrs Ross:** As it is today, and the difference.

**Mr Webster:** I can probably best explain it — water resource management is an issue that land developers deal with quite often. Up until fairly recently, when we were dealing with a development application we would have to seek approval from the area municipality, quite often the regional government, the local conservation authority, the Ministry of Natural Resources directly and maybe, as an issue through the Fisheries Act, from the federal fisheries department. All of those were not necessarily going in the same direction. Quite often, in all honesty, there was considerable overlap, they were going in different directions. What we're starting to see through the proposals for the act is to put these into little boxes so we can more clearly understand. What it should do in the long run is allow a practitioner to go directly to one source, be able to find it and have clearly established mandates of all that aren't overlapping and are not conflicting.

**Mr Crozier:** Thank you, gentlemen, for coming today and giving us your comments. The only thing I would say is that Mel Lastman many years ago said, "Developers are not to be feared, but they are a force to be reckoned with." I'll take that into consideration when I review your comments.

**The Chair:** Mr Martin, no questions?

Thank you very much for coming forward today. We very much appreciate you taking the time.

1740

## CONSUMERS' GAS

**The Chair:** We now move to the last presenter for today. If the representative of Consumers' Gas could come forward and identify yourself for Hansard, we would greatly appreciate it. You may begin.

**Mr Glenn Hills:** Good afternoon. My name is Glenn Hills. I'm senior vice-president and corporate secretary for Consumers' Gas. I'm the person who's responsible for regulatory affairs within our company. I'd like to thank the committee for allowing me to appear before you today and explain why some of the proposed changes in Bill 25 are so timely and so important to the energy industry.

Our interest in Bill 25 focuses on amendments to section 19 of the Ontario Energy Board Act, which currently requires that the Ontario Energy Board determine the rates charged by natural gas distributors in the province on a cost-of-service basis. If passed, Bill 25 will allow the OEB to use other, more market-responsive regulatory tools.

Consumers' Gas supports this bill for one very simple reason: We can't restructure Ontario's energy industry unless we also restructure the regulatory process. By allowing the Ontario Energy Board to find new ways of doing business, Bill 25 would support greater customer choice and greater price competitiveness in the emerging energy marketplace.

Indeed over the next two years we will witness an extraordinary transformation in our province's energy industry. These changes include the deregulation of the electricity industry; increasing competition between energy services companies, each offering new and more targeted services to its customers; convergence of natural gas and electricity — if Bill 35 passes, customers will be able to buy both their natural gas and electricity supply from the same company; and utilities, both natural gas and electricity, will go through tremendous transformation — as natural monopolies, their sole focus will be the safe and reliable delivery of energy.

As a result, we need to develop incentive-based forms of regulation to instil a new competitive spirit within regulated utilities, one which will bring down the cost of regulation and also generate guaranteed savings for the customers.

To explain, let me first start with a little history. Consumers' Gas, as you probably know, is Canada's largest and oldest natural gas distribution company. The vast majority of our 1.4 million customers are located in central Ontario from Mississauga to Penetanguishene and Havelock, in eastern Ontario from Brockville to Deep River to Hawkesbury, and throughout the Niagara region.

We have served our customers for 150 years, satisfying their energy needs by providing low-cost and abundant energy. The arrival of natural gas supplies from Alberta in the 1950s and 1960s brought terrific expansion of the natural gas system and helped fuel much of the economic surge of the post-war years. In those days the price of gas was regulated by the federal government. The Ontario Energy Board kept a close eye on the utilities, making sure that this expansion was rational, wouldn't unduly affect existing customers, and ensured just and reasonable rates. We were, after all, a natural monopoly, so regulation through the OEB became the best substitute for competition.

Then in 1985 came deregulation of the price of natural gas. Now we could buy natural gas much like any commodity, and our customers benefited. The cost of the actual gas supply has remained relatively stable since that time. Gas supply, however, only accounts for about one third of a customer's gas bill. The cost of delivering the gas to homes and businesses makes up the remaining two thirds, and is regulated.

As we have come into the 1990s, cost-justified allocation has become a complex and cumbersome process in the evolving competitive market. It requires legions of staff on both sides to in effect go through our books line by line to ensure that our competitive activities, such as our appliance centres or our financing programs, are not benefiting from the distribution business. It's a tough way

to run a business. We believe, and as I understand, so does the OEB, that there is a better way of doing things.

As I mentioned earlier, utilities are now focusing on the core functions, that being distribution of the commodity. We are currently seeking approval from the OEB to take all those businesses we have developed over the years which are not pure monopolies and spin them off into separate businesses. This process of separating our ancillary businesses from the core utility is commonly referred to as "unbundling."

Let me use our appliance centres as an example. Our competitors are companies such as Bad Boy and The Bay. Their operations are not regulated, so it doesn't make sense that our retail outlets would be either.

We are also proposing that the remaining utility, after unbundling, be subject to performance-based regulation. Simply put, that means that the utility and the regulator sit down and agree to some performance targets. Let's say that we, as utility X, agree to reduce our operating costs by Y% over the next three years. That would be an automatic saving for our customers. There'd be no lengthy review process, but we would still be accountable for the rates we charge.

We, as the utility, now have an incentive to push for even further efficiencies because any savings beyond the agreed-upon target can stay within the utility, whether they be reinvested back into the company or passed on to our shareholders, many of whom are our employees.

Performance-based regulation creates a new entrepreneurial culture within a utility. We would be able to take our ideas to improve service or operations and implement them quickly, without requiring prior approval from the regulator. For the regulator, it satisfies the need to ensure stable and fair rates and accountability to the consumer.

The OEB has a big challenge before it. Under Bill 35, it could soon be not only responsible for the two natural gas utilities but also the 276 municipal electric utilities, Ontario Hydro and the numerous energy marketers arriving on the scene. Cost-justified regulation in this context would be counterproductive and futile, requiring enormous resources and stifling competition.

You can see how, if passed into law, Bill 25 supports the continued evolution of our industry and the belief that energy customers have the right to demand greater price competitiveness and to choose how and from whom they get their energy supply. From our point of view, and from our customers' point of view, that's exactly the kind of innovative thinking we need.

Thank you. I'd be happy to answer any questions you may have.

**The Chair:** Thank you. That affords us approximately two and a half minutes per caucus. We begin with the official opposition.

**Mr Crozier:** Thank you, Mr Hills, for coming. Chair, I have no questions.

**Mr Martin:** I take this opportunity to ask for a little explanation. We've had a bit of a discussion going on in



my office in Sault Ste Marie where, I believe, Union Gas provides the service.

**Mr Hills:** Right.

**Mr Martin:** Even though the industry is now deregulated we've seen an enormous increase in the cost of gas over the last few months. Customers have written in to my office or called me. I've written to the Ontario Energy Board to ask why, if there is this cap on the increase in services, there's this tremendous increase in the cost of the gas itself. It was explained that even though the provider, Union Gas, has a cap on what it can charge for the delivery of the product, there is open competition for the gas itself from suppliers.

The concern is that many people over a few years have changed from one source of energy to another to heat or light their homes because it was sold to them as less expensive. What they're finding now is that the cost is actually going up. You're suggesting that under Bill 25 and some of the further deregulation that's going to take place, prices are in fact going to go down. Is that what you're telling me today?

**Mr Hills:** With respect to the distribution component of the rates, in other words, the cost of the pipes in the ground, essentially, and the services provided by the public utility, I'm not saying they will go down; they should go up at less than the rate of inflation because in the end probably the form of incentive regulation that would be adopted would be that the utilities would have the right to raise their rates at inflation, less a productivity factor, to make sure that they are continuously improving their business.

That's not what's causing the problem for your people in Sault Ste Marie. That's on the commodity side, where natural gas prices have increased over the past year in Alberta and that has been passed on by Union Gas. So this particular item is part of the commodity that has been deregulated and will now be serviced by other than the natural gas utilities, and in the end would not form part of performance-based regulation for the utility.

**Mr Rollins:** Thank you for your presentation. A question that I have in my constituency office quite regularly is that a company comes in servicing a new area and they want to go down this road but they don't go that way, and my constituents cry, "This company has a monopoly; they owe me the pleasure of putting that pipe down," in front of them. What's my answer from you to them, to say, "That's tough, you can't get gas."

**Mr Hills:** We would love to serve every potential customer in the province, but we also have to be fair to existing customers to make sure their rates don't go up too much, because they have to cross-subsidize uneconomic expansion. We have to make sure we have enough business on a pipeline before we build it to make sure it's economically feasible. It's an area that the Ontario Energy Board looks at very carefully. They get a lot of calls in this regard and so do we. We're always striving to make it as economic as we can to expand the system as fast as we can, but we don't want to be unfair to our existing customers either.

**Mrs Ross:** I just have one quick question. On page 7 you say that "it satisfies the need to ensure stable and fair rates." I just don't understand how changing this is going to ensure stable rates. Can you expand on that a little bit?

**Mr Hills:** There are many forms of performance-based regulation. It depends on what the deal is. Typically what a utility would do, as I mentioned before, is offer to enter into a five-year transaction where the rates would go up at less than the rate of inflation each year over those five years. So the customer would know for the distribution system exactly what he or she would be paying over that five-year period, and any ups or downs would be to the cost or the credit of the utility and its shareholders.

**The Chair:** Thank you very much for coming forward today, Mr Hills.

There being no further business of the committee, this committee sits recessed until 1700 of the clock on Monday, October 5.

*The committee adjourned at 1753.*





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# Official Report of Debates (Hansard)

Monday 5 October 1998

# Journal des débats (Hansard)

Lundi 5 octobre 1998

## Standing committee on administration of justice

Red Tape Reduction Act, 1998

## Comité permanent de l'administration de la justice

Loi de 1998 visant à réduire  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Monday 5 October 1998

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Lundi 5 octobre 1998

*The committee met at 1700 in committee room 2.*

## RED TAPE REDUCTION ACT, 1998

LOI DE 1998 VISANT À RÉDUIRE  
LES FORMALITÉS ADMINISTRATIVES

Consideration of Bill 25, An Act to reduce red tape by amending or repealing certain Acts and by enacting two new Acts / Projet de loi 25, Loi visant à réduire les formalités administratives en modifiant ou abrogeant certaines lois et en édictant deux nouvelles lois.

## CONSERVATION ONTARIO

**The Chair (Mr Jerry Ouellette):** I'll ask the first presenter, the Association of Conservation Authorities of Ontario, to come forward. If you or your representatives could identify yourselves for Hansard, we would appreciate it. Just so you know, there's a total time allocated of 15 minutes. At the conclusion of your presentation, you may have the remainder of the 15 minutes divided equally between the three caucuses. Thank you for coming today. You may begin.

**Mr Jim Anderson:** My name is Jim Anderson. I'm the general manager of Conservation Ontario, formerly the Association of Conservation Authorities of Ontario, as listed on your agenda. Thank you for the opportunity to address your committee.

Ontario's conservation authorities have had a long history of discussing and debating red tape reduction measures with the government of Ontario. In 1994 we had the opportunity to initiate discussions with the government on a document we entitled Blueprint for Success. One of the major proposals in that paper was the reform of the water management regulatory system in Ontario. We suggested the system was plagued with overlap, duplication and red tape, and we recommended a one-window service delivery model for the delivery of regulatory services related to water.

After the formation of the Red Tape Commission and following up on these discussions, we made specific recommendations to that commission. The highlights of our first submission to the commission were: There is an established need for government involvement in resource-management-related regulations as an integrator-coordinator, if not more; responsibly administered local

regulations provide more flexibility than other processes, yet offer the needed level of protection; there is a need to reduce costs and improve delivery of all resource-management regulations, including ours; the most suitable jurisdiction for delivering water-related regulations is the watershed.

We believe this can be accomplished through an integrated piece of legislation combining a number of related water-regulating pieces of legislation. Recognizing the challenge that this is a huge undertaking, in the shorter term we suggested that allowing the delegation of approval of each of these pieces of legislation to one agency would aid in achieving the desired results. In order to administer a comprehensive approach, existing pieces of legislation needed to be clarified, including our own.

The results of the Red Tape Commission's deliberations were contained in Bill 119. This bill reflected a strong orientation to reduce red tape. The major improvements as they related to us were the creation of a generic regulation model which would see the many conservation authority regulations replaced by one and the elimination of the tedious process of executive council approval of specific conservation authority regulations, all of which were the same; the advancement of the concept by which related water regulatory processes contained in legislation could be delegated and, through this orderly process, a one-window approach could be brought into being.

The bill was a major move forward, and because of this much discussion took place on the implementation details associated with it. Conservation authorities entered into discussions with the province on implementation improvements to that bill on the understanding that the policy concepts outlined in it would be protected. Because of the significant amount of input and discussion we had with the previous red tape bill, much of our discussion, we believe, is reflected in this, the latest bill. Our comments relate more to an improvement in implementation.

We do not offer any policy alternatives in our submission to you. However, the people at the end of the customer delivery chain — the customer, the public — don't necessarily distinguish between a policy-generated delay versus one associated with implementation. We would point out that we have had discussions with provincial staff and are hopeful that these suggested improvements will be considered.

The improvements we offer — and we relate them all to section 28; for those of you who don't know, that is the



section that governs flood plain regulations — are as follows:

Subsection (7) requires that authorities' regulations must conform with the generic regulation of cabinet. The problem with conformity is that it is a very loose term and invites a challenge based on comparative interpretations of the generic regulation versus that of the authority in question. An example of this is the arguments that go on before the Ontario Municipal Board concerning the conformity between a zoning bylaw and an official plan.

The first defence of an accused will be that the regulation is invalid by reason of lack of conformity. That conformity does not have to be related to the particular offence or the area involved or the resource threatened; it can be any area. It can be a very mild lack of conformity. Because somewhere else in the bill the bill requires the minister to approve a regulation for it to be valid, the minister can achieve conformity through the issuance of his or her approval only if in his or her opinion a proposed regulation does conform.

We believe the issue of conformity, while important and necessary, can be handled in a fashion that does not invite unnecessary delay in decision. It's our recommendation that either this section be removed, because conformity can be achieved through another means, or amended to add "the minister's approval" on the tail end.

Subsection (3): Conditional permissions under this subsection are a welcome addition to the authority's capabilities and will improve and streamline the process. This improvement will allow conservation authorities to place conditions on an approval and cease the process of requiring applicants to reapply in a fashion that they might approve.

Subsection (1)(a): This subsection does not contain the requiring permission clause that subsections (1)(b) and (c) do. While the conservation authorities have the right to regulate, they do not have the right in this instance to require permission. The conservation authority can pass a regulation and hope that people follow it; if they do not, then prosecution follows.

It is our recommendation that this bill could be improved if the power-to-require-permission clause were added to this subsection. It will clearly identify a potential problem early, both for the conservation authority and the applicant.

Subsection (8): The transition provisions in the regulation suggest that the authority has two years to bring its regulation in line. This may be too little time. First, given that the act now restricts the areas to be regulated, could an authority regulation, which at the present time regulates areas arguably not within the list, be said to be valid? The provision of subsection (21) seems to suggest that the old regulation would be valid, at least for the two-year period. However, it also says that the old regulation would only be lawful under minister's approval. The net result, we think, is that one might go around in a circle on this one.

It is suggested that the transition provisions be reworded to make it clear that the regulation is a valid and enforceable regulation in the transition under the act.

Second, two years may not be sufficient time within which to organize new mapping and new regulations. The timing of the introduction of the generic regulation may afford us some additional time. It is our recommendation that the transition time to convert our present regulation to the new model be extended to three years.

Subsection (12): Delegation, notice and hearings to us seem a bit confusing. Effectively, subsection 28(12) provides that notice has to be given to all applicants in all cases except where permission is to be granted without conditions. The hearing must be before the authority or the executive committee. This section appears inconsistent with other sections which permit delegation of any powers down to an individual or group. It is our recommendation that the matters of delegation be clarified.

Finally, subsection (17): This subsection should be reworded so that the words "at that person's expense" modify both (a) and (b). Also, the section should give the court more flexibility than simply removal of a building. Site rehabilitation is as important as the actual removal of the building in question. Removal of a building on a side slope may remove the danger, but the slope may, without more rehabilitation, remain unstable. The rehabilitation of the slope may be necessary.

We have also, in our report to you, provided a series of specific legal-type recommendations to clarify subsections (17) to (19). I propose that the committee not read them. I offer them to you as part of the record.

Finally, because of our long-term involvement and interest in red tape reduction, we would like to acknowledge the amount of input and discussion we have had on improvements to our act over the last four years. We would also like to thank this committee for the opportunity to provide input to these, your latest deliberations on red tape reduction.

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**The Chair:** Thank you very much. That affords us approximately a minute and a half per caucus. We begin with the third party.

**Mr Peter Kormos (Welland-Thorold):** That's not a whole lot of time, Chair.

One of the subsections you referred to was 28(1)(a), the permission requirement. You're suggesting that if people were required to obtain permission prior to doing any of the things otherwise prohibited, that would — expand on that, please. I haven't got a whole lot of time. If people are going to be scofflaws, they're not going to seek permission. Right?

**Mr Anderson:** Basically, the process of requiring permission requires that the authority and the applicant sit down and discuss the merits of the situation and reach either resolution or understand that they do not. Now that intermediate process of requiring permission is not there. Basically we have a regulation. If you end up violating that regulation, we have to move into some more legalistic determinations.

**Mr Kormos:** Some folks — not me — might argue that that's additional red tape, that the process of seeking permission could well involve a fee, but nonetheless that it

contributes to red tape. I'm inclined to agree with you. How are you going to respond to those critics, though?

**Mr Anderson:** The secret to removing red tape, in our belief, is to communicate early in the process, upfront the process. We're in the business of resource protection; that's the purpose of these things. We'd like to communicate with applicants as soon as possible in the process, before they get into any form of commitment. By the time you get them, after they've committed a violation, they've spent money and they've got their plans set and committed. That's too late in the process for us.

**Mr Kormos:** I think it's a good proposal.

**The Chair:** We now move to the government members.

**Mr Ted Chudleigh (Halton North):** Very briefly, the conservation authorities in Ontario have undergone a significant number of changes in the last four or five years, and I think it brought their regulations more into tune with each other. There was a large variance in how some of the regulations were implemented across the province, and I congratulate you on getting those things coming together. Certainly they deal a little more closely now with municipalities than they have in the past.

Much along the same lines as Mr Kormos's question, I was wondering how the applications of the bylaws of a given municipality, specifically perhaps around the trespass or access-to-private-property aspects, vary from what conservation authority officers might find themselves having to do in a similar circumstance. Does it vary greatly?

**Mr Anderson:** My sense is that many authorities in the province have the power to inspect for the purposes of enforcing regulation, but I know of no collective process by which they set guideline standards and processes in place for the undertaking of that type of an activity. So they act on their own in that regard and design their own community-based policies regarding that.

**Mr Chudleigh:** Then are conservation authorities controlled or made similar by Conservation Ontario, or does each conservation authority set its own standards in that area as well?

**Mr Anderson:** At this time, each conservation authority sets its own standards.

**The Chair:** We now move to the official opposition; Mr Crozier.

**Mr Bruce Crozier (Essex South):** I just want to comment — and thank you for your presentation today — that Ken Schmidt from the region conservation authority in Essex county has kept me apprised right from the Blueprint for Success on through this process, and certainly we'll have a good look at your presentation with respect to some amendments that might be proposed.

**Mr Mike Colle (Oakwood):** I just have one brief question. In your last point on page 2 you say that "responsibly administered local regulations provide more flexibility than other processes." Talking about local flexibility — I know this government likes the cookie-cutter approach, one size fits all across the province — is there any room for individual decisions made by individual conservation authorities that meet local needs? Are

they being eroded? No pun intended. Is there room for locally made decisions that fit that local conservation authority or that area?

**Mr Anderson:** Quite directly, while the act has changed a lot, it's still the local board of directors or its executive committee that must finally make the decision on an applicant regarding the denial of a permit. So at least the applicant has the opportunity to discuss many times the application of a regulation at the community level, including the board of directors of the authority. That is still contained in the new legislation, and that has been perhaps the reason why we feel so strongly that local regulations have flexibility but yet do offer the protection that they were designed for.

**The Chair:** Thank you very much for your presentation today. We very much appreciate your coming forward.

## HALTON REGION FEDERATION OF AGRICULTURE

**The Chair:** We call the next presenters forward; if the Halton Region Federation of Agriculture could come forward.

**Mr James Fisher:** Members of the committee, good afternoon. My name is James Fisher. I'm with the Halton Region Federation of Agriculture. We're here today to deal specifically with Bill 25 and the section concerning the Conservation Authorities Act changes in the Ministry of Natural Resources part of the bill.

The Halton Region Federation of Agriculture represents about 450 farms in Halton. We are affiliated with the OFA, the Ontario Federation of Agriculture, which will also be making its own presentation. Our members, though, were very concerned that our voice be heard.

We have put together a package here, which I believe is in front of you. It has "Halton Region Federation of Agriculture" on top of it. I'd just like to explain it briefly to you. There's a cover letter on top. The next section is the changes we've requested to this particular part of the bill; I'll go over those in a few minutes. If you don't read anything after that, it's probably all right. The next section is some background notes that we've made in preparation, in studying this particular aspect. I would just point out that the numbers on the side correspond to the numbers in the changes of your draft of the bill. The items with the little dash in front of them are information that has been told to us or that we've derived from literature. The items with the stars beside them are our group's initial comments and concerns. The next section is for reference, and it is a direct copy of the changes to this part of the bill, the Conservation Authorities Act part of the bill. There's a copy of the current act, the relevant sections, which is good for your files, will make sure they're nice and fat, if they're not already.

The last item we included is an initiative that the Halton farmers took upon themselves two years back to develop our own statement of landowners' rights. We did this with many meetings, over a period of almost two years, where we consulted extensively with our farm



membership to try to decide just what we thought our landowners' rights were and should be, and of course it got into many discussions about what good government is and what's fair and what's unfair. We include that because it is the basis of our objections. We're here because we believe in good government, not because we are looking to develop or undevelop, depending on your definition of development. We're very concerned with conservation. Our group, farmers in Halton, were the original founders of the local conservation authorities, and we still believe the conservation authorities have a role to play in today's world.

1720

However, conservation, as I'm sure you're all aware, is a difficult thing to regulate. It's hard to define what good conservation is. There are generally financial consequences to it. I think there is evidence around the world that centralized planning doesn't work for conservation. I'd like to ask you all to think for just a second, what agency, government ministry, advocacy group, whatever, does the most for conservation in Ontario?

**Mr Crozier:** I know the answer to that.

**Mr Fisher:** You know the answer to that. Good.

**Mr Crozier:** Farmers.

**Mr Fisher:** I wasn't including the landowners. Certainly it is the landowners who ultimately do the conservation, but I'm going to suggest to you today, and hopefully not put my foot in my mouth, that the Ministry of Agriculture and Food has achieved the most in the way of conservation in Ontario today, not with regulation but with developing programs, researching ideas and taking them to the point where they're economically feasible to implement — crops that produce more, no-till planters, grass waterways. These people have taken it to the step where it's actually economical to implement, and it's not done with regulation. I'd like you to keep that in the back of your minds as we discuss things, because ultimately the conservation will be done by the landowner, or at least the financial aspect of it covered by him.

I'd like to touch just briefly on the changes we have requested in the second section of the handbook we have given you. We have asked for changes in four areas. This is not to say that farmers are ever completely happy with anything or the rest of it, but we have highlighted four areas that we think need significant change. We would encourage, I might add, a full review of the conservation act, especially if, as the past speaker indicated, you are looking at a redistribution of who controls water in the province and such things. We would like to be very involved with that.

The first change we have requested is that the full authority hear appeals under section 28. Committee level, by all means, for the applications, but in our view the full authority should hear the appeals.

The second section we've identified, and we have suggested a way it could be corrected but any other change that meets the intent would suit us just fine, is that we would like to see regulations made under (1)(c) of section 28 as they are now be delineated at time of regulation. In

other words, you need to map it, you need to say, "This property needs a permit and that property doesn't," when you make the regulation, not leave it to be interpreted at some later time as to where the boundary of the wetland or flood plain is. Everybody needs to know that.

The third area where we have requested changes is in the definitions, which I am told is a political minefield, to try to get everybody to agree on something. However, we weren't at the table when things were discussed the first time, so we would really like to put our ideas forward now. I can assure you that there are many people in my own organization and certainly across the farm community of the province who think our suggestions are mild as far as changes go here.

We have requested in the definition of "development" a "notwithstanding" clause that normal farm practices are not development.

We have requested in the definition of "water course" an absolute minimum area of drainage before they apply. We want to get away from if you dig a trench from your downspout it becomes a watercourse. It's got to be something more significant than that in order to justify the regulations.

In the "wetlands" definition, we have requested that subclause (b)(ii) be deleted. That has the effect on wetlands regulations of only regulating those wetlands that are on-line with a surface water system. It would eliminate from the CA's jurisdiction wetlands that were not on-line. We feel that has been handed down to the local planning authority and the water-taking has always been the jurisdiction of the MOE through the water-taking permit system.

The fourth area in which we have requested changes is on trespass, the new section 30.1, and we have asked that it be deleted in its entirety. We have spelled out some of our reasons in our request. We think it's more than is required to adequately administer the regulations of this act. I hope you'll have a chance to read that section. I'll answer questions on it, but I won't go over it right now.

In conclusion, our group has sent me into this wilderness called Toronto to be sure we are heard. I was pleased to recognize a tractor out front. It made me feel much more comfortable. We support good government and good regulations, and despite the scraggly appearance of the messenger, we hope you'll find support for our changes and encourage agriculture participation in discussions at an earlier stage of these bills.

**The Chair:** That affords us actually a little less or fairly close to a minute and a half per caucus, and we begin with the government members.

**Mr Chudleigh:** Welcome from the great region of Halton, an area of which I have the privilege of representing some portion.

Regarding your comments concerning the boundaries that the conservation authorities regulate within, those boundary lines are currently drawn? This isn't something that would have to be developed, they're already there on the maps?

**Mr Fisher:** It's my understanding that 1(c) replaces the fill line which is in your current regulations, so yes, they are currently drawn.

**Mr Chudleigh:** So that isn't a huge problem to make those part of future regulations, it's already there?

**Mr Fisher:** That's right. It has already been done.

**Mr Chudleigh:** On your comments concerning the appeals going to a full committee as opposed to a sub-committee, there have been a number of stories concerning various appeals, and in my experience most of it has been a matter of balance between what the conservation authority is trying to accomplish and what the farm community may need. There seems to be a lack of understanding on some committees as to what the business of farming is all about in today's world. Would you agree that if there was a stronger agricultural presence on some of these committees, many of the problems would disappear?

**Mr Fisher:** Absolutely. I hope we have made it clear in our presentation that we think conservation is achieved by working together as opposed to any other way, by regulation or whatever. Our concern, especially with committees, and we have had some experience with it, is that when the same four people hear the permit and then hear the appeal, even if there was agricultural representation on the board, you're not getting it heard. We would have loved to have delved into the issue of governance of the CAs themselves, but it's not in this act. We would suggest a full review of the act at some time.

1730

**Mr Crozier:** Good afternoon and welcome, particularly since it's agriculture week in Ontario. I too noticed the tractors out front this morning, and it wasn't me but it was suggested by someone out front that many city dwellers, not to define anybody in particular, might not recognize what those are. I thought that was going a bit far.

In any event, wetlands: I understand, I believe, the point you're trying to make about those wetlands that are not on-line. From your experience and those maybe of the federation around the province, are there many wetlands that wouldn't be on a watercourse? There must have been something that made you raise this question, so I'm curious what it was.

**Mr Fisher:** There's a significant number of wetlands that tend to be the smaller kind, and a lot of CAs haven't regulated them in the past in any way. We have a little bit of paranoia in the farm community. We get one or two, what I'll call zealous enforcement people, and the stories travel very fast and sometimes get bigger, but there's a lot of concern across the province about wetlands. There's a lot of concern about who regulates them and how they're regulated and who pays if nothing can be done. We're not advocating that all wetlands be drained. We're just advocating that it should be one authority that looks after them and the municipally elected level is our preference.

**Mr Kormos:** I'm particularly interested in your observations about section 30.1 and that's the search powers, which are pretty remarkable in view of the fact that a conviction here can result not only in a fine and an enhanced

fine under the amendments, but also a custodial term, a jail term.

If I may — I checked the notes provided by the ministry — perhaps we could ask the parliamentary assistant to give us some specific rationale for section 30.1, which is pretty extraordinary. As I say, the purpose of 30.1 would be to permit authorities to enter on for, among other things, the purpose of securing evidence to obtain a conviction, to send somebody to jail. That's a warrant. That's your issue. Right?

**Mr Fisher:** Our issue is that there should be a warrant if they have the evidence to prosecute somebody. I would point out, though, that most people in violation don't think they've committed a violation. They're quite willing to invite the authority on their property to view it. Most people — well, I shouldn't say most people. I don't have statistics to back that up, but I know of a number of cases where that has been the case. I know of no cases where the authority in our locality has had to resort to getting a warrant to enter a property.

**Mr Kormos:** Perhaps I could put that question to the parliamentary assistant and get some clarification.

**The Chair:** That concludes your time. Thank you very much for coming forward. We very much appreciate that. I believe Ms Ross may be able to provide that information for us as soon as details come forward.

## ONTARIO PROPERTY AND ENVIRONMENTAL RIGHTS ALLIANCE

**The Chair:** We ask our next presenters to come forward, representing the Ontario Property and Environmental Rights Alliance. If you could come forward and identify yourselves for Hansard, we would appreciate it.

**Mr Bob Fowler:** My name is Bob Fowler. I'm the secretary of OPERA and one of our member organizations, the Association of Rural Property Owners in the Ottawa Valley, is here today to present our thoughts and concerns, Mr Bob Woolham.

**Mr Bob Woolham:** My name is Bob Woolham. I'm from North Augusta, Ontario. I operate a farm there of about 360 acres. I'm a director of ARPO and of OPERA.

We wish to provide members of this committee with advice about the Red Tape Reduction Act, schedule I, in particular the reference to the Conservation Authorities Act. We have suggestions on how parts of Bill 25 should be amended to better sustain the natural environment, conserve tax dollars, foster democracy and prosperity in our countryside and reduce red tape.

Firstly, in drafting this bill, Ontario municipalities, Ontario farm organizations and private landowner associations were not consulted, yet these are the sectors most affected. Secondly, sections of schedule I are not related to the reduction of red tape. Greater mandate, more control, extension of power: This is the thrust of schedule I, especially as it concerns the Conservation Authorities Act.

The Ontario Property and Environmental Rights Alliance, OPERA, is an organization of local community associations in Ontario whose members have serious



concerns about ownership of their land and the erosion of property rights. They are worried that ownership of their land is being taken from them. They lack the resources needed to cope with the new urban and bureaucratic pressures bearing down upon rural Ontario. Our members do not hold land next to urban areas waiting for the market to ripen. Rather, OPERA simply represents thousands of private persons who usually, with their family, own some land for one reason or another in rural or farm country Ontario, usually with great pride, commitment and with hard work.

However, for some advocates, landowners are seen to be nothing more than greedy Marxist-defined capitalists whose land should be transferred to government. We are being confronted with a kind of environmental socialism. There is ample evidence worldwide to show that private ownership of land is one of the most powerful motivators in protecting and enhancing value and sustainability of land resources. That, by the way, may sound a little hysterical, but I also participate in things like the national accord on endangered species, water quality, clean water programs and several other things that are happening in this relationship we have.

OPERA's property owners pay a lot of taxes: capital gains and transfer taxes when land is sold; annual income tax on any income earned from it; and of course, annual municipal property tax, including a levy for the conservation authority. All our representations such as these today are funded privately. We do not enjoy a government subsidy like that accorded other special interest groups by government through the use of charitable tax credits for donations.

At the crux of the various issues of concern is the conversion of land use rights from private to state control, either at the owner's expense or that of the municipal ratepayers or both.

To best explain our position we will talk about wetland, although areas of natural and scientific interest, ANSIs, would serve the purpose equally as well.

In fact we would not be here today if we had not learned by accident several years ago that the Ontario Ministry of Natural Resources, without any legislated mandate to do so, had arranged to send its employees on to private land without the owner's knowledge or consent in order to determine and map what parts of his or her land might be better put to the "public good." In most cases, this was labelled "wetland," or ANSI, regardless of how the owner or other agencies might have chosen, if consulted, to designate the parcel.

This sterilization process involved advice to the municipality, thence to the official plan and on to the zoning bylaw. The process presently is winding its way through a costly OMB process.

It is remarkable that the governments of Canada and the USA agreed in 1986 to implement a policy of encouraging Canadian municipalities "to zone or otherwise prevent the destruction or degradation of waterfowl habitat." Ontario landowners thereby would be compelled

gradually to donate their wetland assets in support of improving the fortunes of neighbouring duck hunters.

In Ontario, two things happened in the pursuit of wetland: At great expense a multi-million dollar wetland evaluation system was developed by the Ontario Ministry of Natural Resources, in combination with the University of Waterloo actually, in an effort to determine if a wetland in one location was more important than another. Obviously all wetlands are important and a much less costly, more straightforward alternative might have been invoked.

Secondly, more was better than less. The process was circumscribed to include wetland which was not wetland — cleared or forested land which was flooded by water caused by beaver dams, a phenomena in many areas resulting from government initiatives in the early 1950s.

#### 1740

Every landowner has a very good idea of what parts of his or her property are wetland. No one can hide natural wetland. Wetland isn't something that comes and goes. A natural wetland has been there for generations. Further, it would be academic to attempt to determine if one wetland were more valuable than another. Nevertheless, an exceedingly complex, intimidating and one-sided process was struck, with no input from municipalities, nor from landowners, nor from farm communities. Few are capable of wading through the Wetland Evaluation Manual's elaborate contents and understanding the process. While the process tends to serve more the interests of biologists, this manual was developed, it says, "primarily to serve the needs of Ontario's planning process," any effects of which are taken without compensation. OMNR owns the mandate to identify and evaluate Ontario's wetlands under the Planning Act.

Secondly, beaver-flooded land was included as wetland. This decision was wrong. Beaver-flooded lands are temporary. They come and go, and are subject to bureaucratic manipulation in terms of expansion and proliferation. Beaver-flooded lands are in a very different category and should not be considered wetland in terms of the Planning Act, nor in terms of the Conservation Authorities Act.

I'm going to leave out a couple of paragraphs because I think you can read these for yourself. You know as much as I do about the background on what the conservation authority is responsible for. I'll start on the next page.

In practice, however, a conservation authority's key mandate was concerned chiefly with implementing Ontario's flood plain planning policy statement under the Planning Act, and to managing land owned by the authority for recreational or other uses. The flood plain planning guide states: "It must be stressed that fill, construction and alteration to waterways regulations do not control land use. This is the responsibility of the municipalities and planning boards of Ontario." And so on.

In recent years, both MNR and conservation authorities have been actively promoting their competence in land use planning. Both seek more power and control in this respect, and this is exactly what schedule I sets out to do. It sets out to control and restrict land use, a function nor-

mally accorded municipalities. At the same time, more and more land use planning is being delegated by the province to municipal governments. These competing extensions of mandate sought in this bill and elsewhere are obviously very confusing for Ontario's landowners. It is OPERA's position in this respect that schedule I in its present form means more rather than less red tape.

As well, conservation authorities in recent times have sought out other programs to augment and improve their financial base: corporate donor programs, septic services and the Canada Fisheries Habitat Act, the latter two being billed back to the municipality or constituent. Taking on the Fisheries Habitat Act actually represents a downloading of a federal program on to the shoulders of Ontario municipal governments and their constituents.

Here are some of our comments and recommendations.

Clause 28(1)(b) states, "or for changing or interfering in any way with a wetland." This proposal as it stands is unreasonable and should refer specifically to natural wetlands related directly to a waterway and clarify that wetlands in the act do not include "manufactured" wetlands — and by "manufactured," I mean that some farms now manufacture their own wetlands to clear and clean the water as it moves from the barnyard into the waterway, which works very well; I have one — beaver-flooded land on private property, agricultural drains or roadside ditches. Further, it is unreasonable to legislate that an owner of timber on wetland, ie, swamps located on private property, must also seek the permission of a CA to harvest timber. We used to call it logging.

"'Watercourse' means an identifiable depression in the ground in which a flow of water regularly or continuously occurs." This definition appears to anticipate the Canada Fisheries Habitat Act. The definition should be for a "natural watercourse" and not just "watercourse" and include "in which a flow of water flows along a defined channel, with beds and banks for sufficient time to give it substance" and be "exclusive of roadside ditches and culverts, and exclusive of ditches constructed for the drainage of cleared or once cleared lands."

It is also our position that if a CA contracts to undertake work related to some other act or regulation or code, then definitions of terms like "watercourse" should be those found there and not here.

The "wetland" definition: The definition given is particularly odious. It would severely restrict a landowner from managing land in a way best suited to his or her objectives. First, the definition of wetland should exclude beaver-flooded land, manufactured wetlands and so on and constructed or other ponds which are part of ditches used to drain agricultural or cleared or once cleared land. "Wetland" should not mean cleared land that has been replanted to trees or ornamentals. It should be made clear that "it does not mean land capable of being used for agriculture or forestry use, nor farm woodlots."

Lastly, "An officer may enter and inspect at any reasonable time, any place, structure," and so on. This particular section we find quite objectionable.

First, access to property is already provided in the Conservation Authorities Act under subsection 21(b). Second, it is unreasonable to provide new powers of entry on to private property, especially without cause. It has already been established that employees of government ministries or other agencies using power-of-entry provisions to enter private property in fact may carry out other clandestine functions likely to disadvantage the landowner. Powers of entry facing the private landowner are already extensive and excessive. Entering private property simply to look around without the consent or knowledge of an owner by an employee of a conservation authority in our view is harassment and is unwarranted in a free and democratic society such as the one in which we live.

If indeed some conservation authorities decide to take on other paying administrative tasks, such as septic, or on behalf of other government bodies, jobs such as under the Fisheries Habitat Act, then any needed access to property for inspection purposes should be secured under the terms of the relevant downloaded agreement. For example, a building inspector already has right of entry on to private property for, for instance, septic. Subsection 38(3) of the Fisheries Habitat Act states, "an inspector may, at any reasonable time, enter any place, premises, vehicle," and so on "where the inspector believes on reasonable grounds" that something happened "for any purpose related to the enforcement of this section."

In OPERA'S view, section 30.1 should be deleted. This powerful addition to the act, if it proceeds, will mean that a landowner's rights to the "peaceful use and enjoyment," under common law, will have been further stricken and reduced. These trends towards more and more rights of access on to private land and property constitute an erosion of democracy and a free culture. This trend is particularly worrisome for all landowners. Is this really the government of Ontario's intention?

This concludes my presentation on behalf of OPERA. There is some other material that I photocopied. I have other material as well in support of some of the statements I've made today.

**The Chair:** Thank you very much for your presentation. Actually, that only affords one question, and I believe it will be the Liberal's question.

**Mr Colle:** With this definition of "watercourse," the way it's stated it looks as if a ditch could be a watercourse. It is so vague and open to interpretation. You're basically saying, "Make it very specific; expand it and define it," so you don't have just anything labelled a watercourse at anybody's whim.

**Mr Woolham:** Yes. There's a very good definition in common law, and the one you see there is taken from common law jurisprudence.

**The Chair:** Thank you very much for coming forward with your presentation today. There was only time for one question, Mr Kormos. You will be the one who has the next question if there's only one.

**Mr Kormos:** They raised the issue of section 30.1, like the Ontario Federation of Agriculture, so I want to hear what the government's got to say about that.



**The Chair:** Thank you very much for your presentation. We appreciate you coming forward today.

CANADIAN BAR ASSOCIATION —  
ONTARIO

**The Chair:** We call our last presenters for today forward, the Canadian Bar Association — Ontario. Thank you for coming.

**Mr Glen Davis:** I'm Glen Davis. I'm the nominal front-runner here. The good news is that at this hour of the day, we're not referring to any section numbers or anything else. We're just here collectively, on behalf of the CBAO, to urge you to pass at least the portions of the omnibus bill dealing with the amendments to the Trustee Act. All of our arguing and representing and negotiating has gone on in the past, for several years, in fact, and all parties that we're aware of in the bar association are content that this is a good compromise and a big, big step forward in terms of Ontario law.

I just want to make a point with my material I filed: a copy of the cover of one of the two volumes, the forward and one of the pages of the index of the 522-page law reform commission report in 1984 on the law of trusts, crying out for amendment back then. The provisions in the omnibus bill reflect some of those changes with some twists, but it's a huge step forward, so we urgently welcome the introduction of this into Ontario law, which is still very old for a modern jurisdiction.

1750

As to my two colleagues, one represents the estates and trusts section of the Canadian Bar Association, which is a collection of solicitors interested in estates, trusts, powers of attorney, mostly dealing with things like that. The second colleague is a representative of the charities and not-for-profit section of the Canadian Bar Association.

We're here to stress the point that these amendments are not arcane, exotic things that only affect a few Ontarians; they affect everybody who makes a will, everybody who acts as executor or trustee — which would probably include everybody in this room — every church, every synagogue, every hospital board foundation. These are very wide-ranging parts of our law dealing with the investment of funds by trustees of all stripes and colours. So it's very important stuff to get on the books.

With that, I'll turn it over to my colleague Margaret Rintoul.

**Ms Margaret Rintoul:** My name is Margaret Rintoul. As Glen said, I'm the chair of the estates and trusts section of the CBAO. I'm also a practising lawyer. I'm in a small firm here in Toronto, and a good portion of my practice is estate planning.

I can tell you that it's very common to wind up with trusts that are of fairly small magnitude. We've been hoping for some long time that the proposed amendments that would allow the use of mutual funds for trust investment and the use of outside investment counsel by trustees would be passed into law. It was a great disappointment

last fall when it died on the order paper, and we were quite pleased when it came back on.

We're not just talking the mega-rich and the mega-millions — they can do the full investment portfolios — but when you get down into the \$100,000 or the \$150,000 trusts that are set up under a will for a grandchild, where you've got a family member administering it, or a disabled relative for whom you're maintaining a trust, often the family member trustee doesn't have the expertise themselves to do a full investment portfolio. They have to be able, realistically, to look to investment counsel, to look to mutual funds for their investment.

We are supporting this amendment to the trustee investment provision of the Trustee Act. We'd urge you to pass it even if you don't pass anything else in the bill.

**Mr James Parkes:** My name is James Parkes. I'm here speaking on behalf of the charity and not-for-profit section of the CBAO. I would like to echo the comments of my colleagues from my section's perspective, which really focuses on charitable organizations in particular.

There has been a problem with the ability to invest funds that are held in trust or deemed to be held in trust. A number of these organizations are relatively small and can't afford sophisticated investment advice, and the inability to invest in diversified mutual funds, for instance, has been a serious problem, to the point that we've seen people who would otherwise want to volunteer to sit on a board of some charities decline because they've been concerned about the possible liability involved in making what the law has previously said might be improper decisions about investment.

This bill will certainly be helpful in that regard. Our section supports it and expresses a strong wish that it be passed as quickly as possible.

**The Chair:** Thank you very much for your presentation. That affords us approximately three minutes per caucus. We begin with the third party; Mr Kormos.

**Mr Kormos:** Thank you, Chair.

**The Chair:** No questions?

**Mr Kormos:** No questions. I listened to what they said.

**The Chair:** Very good. We'll move to the government members.

**Mrs Lillian Ross (Hamilton West):** I just have one question. My understanding is that this bill will allow, as you said, investing in mutual funds, which you haven't been allowed to do. Some people might say that opening up the list and providing more opportunities would create opportunities to invest in unsafe areas. How would you react to that?

**Mr Davis:** The bill also introduces mandatory investment criteria that trustees must advert to. A major theme of these amendments is that investing trust monies is a very serious business which often gets insufficient attention especially by lay trustees and fiduciaries of other kinds. The ability to make a poor choice of an individual stock has existed for several hundred years, so the ability to choose a mutual fund is just another opportunity to do

something foolish. It doesn't change the character of the prudence that has to be brought to bear.

**Mrs Ross:** It just gives you more flexibility to invest in other areas.

**Mr Davis:** Enormously. More opportunity for smaller funds, in particular. How can one invest \$50,000? You can't achieve diversification or you can't do a lot of things that you can do with a fund. The amendments cover much more than just funds, but they're all very positive.

**The Chair:** We move to the official opposition; Mr Crozier.

**Mr Crozier:** Thank you, no.

**The Chair:** Thank you very much for your presentation. We very much appreciate your taking the time to come before us.

At that, this committee is adjourned until Tuesday, October 6.

*The committee adjourned at 1756.*



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## Assemblée législative de l'Ontario

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# Official Report of Debates (Hansard)

Tuesday 6 October 1998

# Journal des débats (Hansard)

Mardi 6 octobre 1998

Standing committee on  
administration of justice

Red Tape Reduction Act, 1998

Comité permanent de  
l'administration de la justice

Loi de 1998 visant à réduire  
les formalités administratives



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Tuesday 6 October 1998

Mardi 6 octobre 1998

*The committee met at 1659 in room 228.*

## RED TAPE REDUCTION ACT, 1998

LOI DE 1998 VISANT À RÉDUIRE  
LES FORMALITÉS ADMINISTRATIVES

Consideration of Bill 25, An Act to reduce red tape by amending or repealing certain Acts and by enacting two new Acts / Projet de loi 25, Loi visant à réduire les formalités administratives en modifiant ou abrogeant certaines lois et en édictant deux nouvelles lois.

COLLEGE OF PHYSICIANS AND  
SURGEONS OF ONTARIO

**The Chair (Mr Jerry J. Ouellette):** I call to order the standing committee on administration of justice to further hear presentations on Bill 25. If the College of Physicians and Surgeons of Ontario could come forward and identify yourselves for Hansard, we would appreciate it. Just so you know, there is a total time allotted of 15 minutes. At the conclusion of any presentation, the time is divided equally between the three caucuses. Thank you for coming. You may begin.

**Dr John Bonn:** Mr Chair and members of the committee, thank you for the opportunity to comment on this bill. My name is John Bonn; I am the registrar of the College of Physicians and Surgeons of Ontario. On my left is Dr Joseph Homer, a family physician from Hamilton, who is the president-elect of that body.

I thank you for consulting with our college and the Federation of Health Regulatory Colleges during the drafting of this bill. As a result of that consultation, many of our concerns have been addressed, and we are generally supportive of the changes proposed. We are particularly pleased that the bill contains changes converting certain regulatory powers to bylaw-making powers of the college and provides for the loosening of confidentiality provisions in certain appropriate circumstances.

We believe that this will allow the CPSO to be a more effective regulator. While the joint submission from the federation speaks to our general support for this legislation, I would like to address two specific sections of Bill 25, subsection 15(4) regarding frivolous and vexatious complaints, and subsection 19(5) regarding the confident-

iality protection for information received in the course of a quality assurance program.

To address the first issue, I think it would help the committee if I gave you a general description of our complaints process at the college. As required under the act, any complaint, in order to be investigated by our complaints committee, must be in writing by the complainant. This college receives, on average, 2,000 written complaints from the public every year. These involve a variety of concerns with physician behaviour or clinical practices and may include, for example, difficulties in communication, concerns about clinical deficiencies, allegations of sexual abuse, complaints about access to medical records.

The complaint goes through a thorough process. There is an assessment conducted by staff to determine the nature of the complaint. The complaint is assigned to a specially trained investigator, who will speak with both the complainant and the physician against whom the complaint was lodged. The investigator facilitates the exchange of information between the complainant and the physician by communicating each side's concerns to the other.

Our college believes in the efficacy of the general administrative and regulatory trend towards offering dispute resolution as the preferred approach to the settlement of complaints, and so we put a great deal of effort into mediating disputes at this level. Investigators collect and review pertinent medical records, speak with witnesses or experts, collect statements and take any other steps necessary to clear up misunderstandings, misperceptions or poor communication between the physician and the complainant.

Often, if both parties agree that their concerns have been adequately addressed, the complaint can be resolved at this level. On average, of the 2,000 complaints we receive each year, about 800 are resolved in this manner, without a referral to a formal complaints committee hearing. The remaining 1,200 cases are referred for full investigation and an ultimate decision. The complaints committee has the power under legislation to decide several outcomes: a decision of no further action; a verbal or written caution issued to the physician; a referral of the complaint to the executive committee for further review; a settlement through an alternate dispute resolution, with the mutual consent of both parties; a direction of the matter to a quality assurance program for assessment and remediation.



tion of a particular clinical deficiency; or a referral to the discipline committee with a charge of professional misconduct.

Of the 1,200 complaints investigated each year and presented to the complaints committee, between 10% and 30% can be considered, in the wording of the legislation, "frivolous, vexatious, made in bad faith or otherwise an abuse of process." Bill 25 would allow for the expedited processing of such complaints. Let me give you some specific examples of complaints we receive which in our opinion could be considered under this definition. All of these complaints were investigated fully.

One complainant demanded to be admitted to a hospital bed after the physician had appropriately investigated and diagnosed a cold. When the physician declined to offer this patient a hospital bed, a formal complaint was made to our college and a full investigation had to be undertaken.

Another complainant was a respiratory therapist employed by a hospital. It was a labour dispute. She was fired from her position with cause, but because the person who made that ultimate decision was a physician, the respiratory therapist complained to our college, and we were required to conduct a full investigation and review by a complaints committee. This is the type of complaint that we see very frequently, wherein a complainant may try, in our view inappropriately, to use our relatively fairly simple and open procedures rather than the more appropriate but costly and involved processes required of a legal challenge to settle the grievance.

We have had a complainant lodge a grievance against a physician as a result of the physician's personal views on social policy issues rather than anything to do with his ability to provide good clinical care, and we have complaints which are on their face implausible and sometimes involve individuals who wrongly believe that they are being persecuted by a physician or physicians, but because they hold a licence from our body, we are then looked to by the complainant to resolve a difficulty.

Thus, the proposed frivolous/vexatious clause in your legislation is important to the work the college needs to do to protect the public effectively and to deal expeditiously with other complaints. We fully support the provisions of Bill 25 which would allow a complaint deemed frivolous or vexatious to be withdrawn from the full complaints process. We are convinced that if these matters can be dealt with in an expedited manner, the college will be able to better use its time and its resources on complaints of a more serious and urgent nature. We know that all health regulatory colleges in Ontario have been lobbying for the ability to deal with inappropriate complaints via such a process since the passage of the RHPA. We note that both the health professions board and the College of Teachers have such a process incorporated into their legislation.

We appreciate that there have been concerns raised that this change would allow professional colleges to disregard public concerns and act in a self-serving manner. I can't emphasize enough that our college would in no way not

take responsibility and act in the public interest. We would not use this section irresponsibly.

Every public complaint made in writing to the college will continue to be investigated and assessed. The only change this legislation would permit is that we would create a two-step process that would allow us to possibly treat inappropriate complaints in a more expeditious manner. We believe this is a preferred means of serving and protecting the public.

I would also like to emphasize that the existing second level of protection for the public will continue to function in the form of an appeal to the health professions board. If there is any disagreement between the public complainant and the complaints committee concerning the appropriateness of the disposition of the complaint, the individual will be free, as they are now, to appeal our decision to this board.

The second issue is that of the confidentiality provision for quality assurance materials. As you know, section 36 of the RHPA provides for the confidentiality of information received during the course of work at the CPSO. Basically anyone working at the college who in the course of their duties comes upon information is put under an obligatory duty of confidentiality, save and except for certain specified exceptions in the act. Subsection 19(5) of your bill specifically adds a confidentiality requirement for "information held by a member for the purpose of complying with the requirements of a prescribed quality assurance program."

This specific mention in the bill of quality assurance programs is considered necessary because these programs were developed by regulations after the RHPA came into effect. Subsequently there were concerns that QA programs might not be protected by the confidentiality provision of section 36 of the RHPA.

While we feel that this confidentiality protection is very important and needs to be included in the act, we are concerned that subsection 19(5) may weaken the confidentiality protection of other parts of section 36 of the RHPA. It's a legal maxim that once an express mention of one thing is made in legislation, it may exclude another. Once some function of the college is set apart for particular protection, the rules of legal interpretation indicate that other college functions not treated in the same manner will no longer receive that same level of protection.

We are confident that the drafters of this bill did not mean to weaken our confidentiality protection. To make this intention clear, we might suggest respectfully that subsection 19(5) be amended to include the initial phrase, "Without affecting the generality of section 36 of the RHPA," and then as printed. This amendment would not affect the confidentiality provisions of the RHPA, nor would it change the intent of Bill 25. It is our understanding that this suggestion will also be included in the brief presented by the Federation of Health Regulatory Colleges of Ontario.

This concludes our presentation. We would be pleased to respond to any questions the committee may have.

**The Chair:** Thank you very much. That allows each caucus approximately a minute and a half for questions. We begin with the government members.

1710

**Mr Tim Hudak (Niagara South):** Thank you very much, both of you, for your presentation. Let me say as well that we appreciated your consultation and the suggestions we have had from the College of Physicians and Surgeons. Your suggested amendment is welcome, and we appreciate that. The committee will be reviewing that suggested amendment.

Let me ask you this: If somebody had suggested in debate or otherwise that patients should have access to quality assurance records, why is it important in terms of a health care perspective to maintain the confidentiality of those quality assurance records?

**Dr Bonn:** Quality assurance was designed to be a program to rectify a perceived deficiency in clinical ability or care. It's not a form of punishment or a form of restriction on the practice of a physician or other health professional. If there is a problem, society is better off if we can fix that problem and put that professional back into the front lines of providing care. If confidentiality was not provided in the legislation, it is the opinion of the health professions that it would not be an effective program. You need buy-in to get quality assurance. You need physicians and other health professionals willing to undergo courses, training, retraining and assessment in an effort to bring them up to the mark that has been established by the college. So confidentiality is probably a key part of any quality assurance program in order for it to work.

**Mr Bruce Crozier (Essex South):** Welcome, doctors. I appreciate, as has been said, the completeness of your submission. I'm just curious. When the College of Physicians and Surgeons of Ontario prepares a brief like this, is there a committee that vets it? I suspect you can't contact every physician in the province of Ontario, so do you vet it through a committee to get comments? I'm just curious.

**Dr Bonn:** No, this was not vetted by a committee. The gist of our presentation is prepared by our staff. It is distributed to our executive committee, which advises that we're in the right direction or not in the right direction and what they would like expressed to a committee such as this. So there is a formal procedure wherein the opinion of the college is brought to the table. It's not the opinion of myself, my policy director or anyone else.

**Mr Crozier:** It's certainly no reflection on you, sir, but I just wondered.

**Dr Bonn:** I understand your question, sir. I appreciate it.

**Ms Shelley Martel (Sudbury East):** Thank you for coming this afternoon to share your views on this. Can you just outline for the committee again the complaints procedure that you would foresee, then, with respect to the changes that occur in the bill. I'm assuming you would still have an initial process where there would be an assessment conducted by one of the staff or several of the

staff and that investigated and some mediation. Is that still part of the process, even if you have a complaint that you consider to be vexatious?

**Dr Bonn:** Absolutely. As you know, the bill has a formal procedure to be established, wherein if a college determines that a complaint is within the frivolous, vexatious or abuse-of-process classification, contact is made with the complainant to let them know that the process is considering not proceeding because it fits into this classification and inviting submissions, which are then assessed.

Certainly, we would never delegate these to a lesser stream. They would get a full workup up until the time that the frivolous and vexatious designation was made, and then we proceed carrying out the process that is set out in the bill to protect the complainant from someone just out of hand dismissing. We would not do that, and we don't foresee any problem with this legislation.

What we really are in favour of is the fact that the figure of 10% to 30% represents a huge investment, not only in dollars but in time and resources, that should be better spent looking after what, for want of a better term, would be called the more serious complaints. Our health college feels that is the biggest advantage, and I know the other 22 health colleges feel the same way.

**The Chair:** Thank you very much for your presentation today. We very much appreciate your coming forward.

## ONTARIO FEDERATION OF AGRICULTURE

**The Chair:** At that, we call our next presenters forward, the representatives from the Ontario Federation of Agriculture. Thanks for coming. You may begin.

**Mr Terry Otto:** Thank you very much, Mr Chair. Good afternoon, members of the committee. My name is Terry Otto. I'm from the Ontario Federation of Agriculture. I'm an executive member. My associate here is Peter Jeffery. He's one of our staff people in research.

OFA will only comment on two schedules, schedule A and schedule I.

Schedule A amends the Drainage Act and the Tile Drainage Act and repeals the Sheep and Wool Marketing Act. We support these changes.

In schedule, I we'll focus our comments on the Conservation Authorities Act and the Forestry Act.

The amendments to the Conservation Authorities Act are far-reaching and fundamentally change the act's focus. They should be addressed in a stand-alone statute where they can be fully addressed.

OFA recommends the amendments to the Conservation Authorities Act be withdrawn.

Section 28 calls for ministerial regulations in place of regulations made by the Lieutenant Governor in Council. We oppose regulation-making authority of this scope in the hands of one person.

Clause 28(1)(b) is too broad. It could include municipal drains constructed under the Drainage Act. Municipal drains improve the productive capability of agricultural



land by speeding up the removal of excess water. They are paid for by the landowners whose lands they benefit. These landowners are financially responsible for the maintenance of these drains.

Clause 28(1)(c) includes situations where the conservation of land "may" be affected by development. "May" and "conservation of land" are excessively vague.

Clause 28(1)(e) adds new entry powers to the conservation authorities' additional powers that are unnecessary.

Subsection 28(17), restoration for contravening a CA regulation, needs to exclude watercourses that are municipal drains.

Subsection 28(20) differs from the provincial policy statement under the Planning Act of 1996, developed without public consultations, only Conservation Ontario, the Urban Development Institute and an environmental group.

Subsection 28(20), development: There is no mention of requiring approval under the Planning Act. Would a farmer need approval to build or maintain a fence, place a water tank or build a livestock feeding structure?

Clause 28(20)(b) requires approval for changes in the use, potential use or size of a building. It should exclude changes in use that do not require Planning Act approval and be limited to actual changes, not potential ones. Potential use gives too much discretionary power to the conservation authority.

The "hazardous land" definition is essentially identical to the "hazardous lands" definition in the provincial policy statement. Separate definitions are confusing.

"Wetlands" and "wetland": What purpose is served by different definitions of the same term? The provincial policy statement definition includes the four types of wetlands: swamps, marshes, bogs and fens.

Ontario's farmers sought the "Periodically soaked or wet lands being used for agricultural purposes which no longer exhibit wetland characteristics are not considered to be wetlands for the purpose of this definition" paragraph.

The statement, "But does not mean agricultural land that is periodically soaked with water" in the Conservation Authorities Act does not provide farmers with the assurance the provincial policy statement does. Farmers must know that productive lands will not be defined as wetlands by CA staff.

The "watercourse" definition is too vague. Will ruts in a laneway or furrows in a plowed field be a watercourse? Could "regularly" be one day a year?

Pollution: Are the existing statutory prohibitions against pollution sufficient? The definition is too broad. It could include the spreading of manure or use of chemical fertilizers or pesticides. The Environmental Protection Act excludes the application of "animal wastes disposed of in accordance with normal farming practices." The Pesticides Act authorizes the use of various pesticides. Farmers over the years have demonstrated their responsible use of these products through the development and support of the grower pesticide safety course.

## 1720

In section 30.1 we object to expanded search powers for the conservation authority staff.

Clause 21(b) and both clauses 28(1)(d) and 28(1)(e) provide entry powers. A great deal of harm may be caused to farmland or livestock by an uninformed or unaccompanied inspector-enforcement person. Many livestock farms employ biosecurity measures to maintain herd health by prohibiting animal contact with non-farm personnel. There is no reason for conservation authority staff to need to enter a livestock building. Fruit, vegetable and horticultural crops could experience crop loss through plant diseases transported from farm to farm on the tires and/or footwear of conservation authority staff.

Our comments on the Forestry Act: The OFA has a long-standing interest in tree policy. We commented on it in *Before You Cut That Tree*, in 1992, but not on these proposals.

Ontario farmers are the stewards of almost 14 million acres of land, and we have amply demonstrated our ability to responsibly manage natural resources in a manner that both maintains and enhances the environment. Farmers have preserved woodlots, they have planted windbreaks and they have reforested marginal lands. Only 15% of the productive forests in Ontario are found on private land; 85% are found on crown land.

In the definition of "good forestry practices" is included the phrase "the aesthetics and recreational opportunities of the landscape." There should be no public rights to recreation on farmland. The definition of "woodlands" should be expanded to exclude fruit and nut trees and trees grown for fibre or fuel.

Section 8 under the powers of entry is too broad and needs to be restricted to include only the inspection for forest pests. The Forestry Act must not provide entry powers to "survey and examine the timber and other natural resources on the land in order to determine the suitability of the land for forestry purposes." This is an unwarranted intrusion on the rights of private landowners. We demand that any rights to enter privately owned land be clearly limited to inspection for forest pests only. Entry for other than this reason should only be by invitation or by permission of the landowner.

Subsection 10(3), injury of trees: Nowhere is the term defined.

Clause 11(1)(a): "Woodlands of the size specified in the bylaw" is unacceptable to farmers. Farmers should not need permits to cut their own trees.

Subsection 11(4): Where tree bylaws do not apply, this section should include fruit, nut, pulp or other lumber and trees cut to clear land for agricultural production, including squaring up a field, clearing up fence rows, lanes or windbreaks.

We object to the repeated use of the phrase "destruction of trees" due to its negative connotation. Farmers harvest trees from their woodlots through selective cutting. Harvesting stimulates growth of the remaining trees, leading to improved woodlot health and a continuous supply of healthy trees.

Farm woodlots provide significant amounts of wood for a variety of uses — building materials, fence posts, fuel, veneer logs, timber and pulpwood — and are part of a normal farming operation and do contribute to the income of farmers.

That basically concludes our presentation. As I said earlier, we would like to see the changes to the conservation act withdrawn. We can live with the forestry practice, provided some of these changes as we have highlighted are made in the new draft legislation. We would be pleased to try to answer any of your questions, and I thank you for the opportunity to present this paper to you people.

**The Chair:** Again, that affords us approximately a minute and a half per caucus, and we begin with the official opposition.

**Mr John C. Cleary (Cornwall):** It seems to me that you didn't have much input into this when it was being drafted. Is that correct?

**Mr Otto:** I personally had no input, and neither did any other farmer in the province to my knowledge.

**Mr Cleary:** That's not what we've been led to believe around here. We were told that all this new legislation is what the residents of Ontario wanted, and the agricultural community in particular. I was a member of the conservation authority for a lot of years, and chair, and I found that we were in conflict at that time with the Drainage Act on a lot of issues. You know we're in the business here in rural Ontario to make a living and the farmers know what's best to do with their land. I just wonder, now that you've spelled this out, what are your next steps, or are there any?

**Mr Otto:** I guess it's up to this committee. If they pass the legislation without any changes, then there's not much we can do other than live with it and yell like hell after. But if you decide to go ahead with some of our recommendations, hopefully you'll set up another committee to look at these and ask for some of the landowners' input.

**Mr Cleary:** I kind of hope they would, because I come from agriculture, I've been involved in it all my life and I understand the problems you've mentioned here and I'm —

**The Chair:** Thank you, Mr Cleary.

**Mr Cleary:** I guess I'm cut off.

**The Chair:** Yes. We now move to the third party.

**Ms Martel:** Thank you for coming in today. You made it very clear you were very unhappy, especially with schedule I. Just to follow up on this, because we understand you haven't been consulted, is there any reason in what you've read to see that the government would have to continue with this schedule, any reason at all, or would it be fair to say there is nothing in here that is so time-sensitive or sensitive in any other way that it shouldn't be pulled and a full and adequate discussion take place with your organization to do this right, if the government intends to do it at all?

**Mr Otto:** I can't see anything pressing in the new legislation at all, and there's absolutely no reason as far as I'm concerned, and probably the rest of the people I work with, that we could not set up something, and we could

partake in these meetings and find some other landowners who have interest in this as well.

**Ms Martel:** So there are changes that might be worthwhile? Probably not the ones that are listed here, but there are some changes that if the government would sit down, you could probably come to some kind of solution?

**Mr Otto:** I think so, yes.

**The Chair:** We now move to the government members.

**Mr Ted Chudleigh (Halton North):** Thank you very much for coming in today and thanks for your presentation. It's a very complete presentation.

I'd like to ask you a question regarding the access to private lands and also wetlands. Halton North is the riding I represent and in my area the conservation authority has done a reasonable job in erosion control. As you know, the Niagara Escarpment runs through that area and there's a hilly aspect to it and controlling erosion is an important part of their responsibilities.

From that point of view, would you agree or would you have comment that within the flood plains of watercourses there is a responsibility for the conservation authorities to have access to those lands? Second, in the definition of "wetlands" I have a concern about wetlands which are not part of a year-round watercourse, a well-defined watercourse. I guess we all know of fields that have wet spots in them and those wet spots in some years may be 100 acres, may be 10 acres, whatever, and they're not part of conservation lands, never have been, in my opinion, and in some places may be defined as such. Would you comment on those two aspects of the bill? Is there a need for conservation officers to have access to some areas within a watercourse?

**Mr Otto:** I guess the government has given them powers to have access. I would argue that if they're coming on to my land, they should at least give me the opportunity to say yes or no. They should not be able to just go on whenever they bloody well like.

1730

In regard to fields having wet spots in them, yes, we all know fields that have wet spots in them but some of this legislation, I'm led to believe, is so vague that they can declare a field with a wet spot in it as part of a conservation land that should be protected in some sort of way, and then they would be able to apply some of these extraordinary powers they are being given. That's what we're very frightened of. In our area where I come from there's a feeling that the conservation authorities are trying to create jobs for themselves and trying to get more and more power all the time. I think there is presently legislation in effect that handles a lot of the things these people are actually after.

**The Chair:** Thank you very much for your presentation today. We appreciate your coming forward.

#### COLLEGE OF DIETITIANS OF ONTARIO

**The Chair:** We now call upon our next presenters, the College of Dietitians of Ontario. You may begin.



**Mr David Dawson:** My name is David Dawson. I live in the city of Hamilton and have been a public member of the council of the College of Dietitians since July last year. I am currently the chair of the discipline committee as well as the vice-president of the college, which is the designated position for public members on the executive of the council. The president — and not to be too confusing because you now have the past president listed on the agenda — the current and new president, Brenda Wines-Moher, would have liked to make this presentation but was unable to rearrange her schedule. We had elections of the executive just two or three weeks ago and Micheline LaForme was the one who requested that we have time here at the committee.

With me today is Shirley Lee, who is a registered dietitian and the registrar of the college. Shirley is here to provide professional or administrative background to any questions you may have.

As we outline in our brief, in general the college is supportive of many of the initiatives of Bill 25. Any bill that can streamline the administrative process as well as providing additional clarity to our role as a regulatory body is welcome. We know that you have received many written briefs from other regulatory health care professions. We know that the physicians and surgeons have just presented and that you will have another one just after us.

We wanted in particular to highlight some of the aspects of the changes to the RHPA, partly because we're a relatively new college, and also we believe that administratively we may have more in common with the newer colleges that were enacted in 1991. We knew many of them would not be able to appear because of time and because they wouldn't have had the inclination, and we thought we could provide a different perspective.

On the parts in the first part of our brief that are supportive of the bill, we would encourage all members of the committee and the respective parties to adopt these changes. We feel these amendments will help us and strengthen our role to protect the citizens and residents of Ontario.

The first part of our brief talks about evidence in proceedings, amending section 83 of schedule 2 of the Regulated Health Professions Act by adding a provision to prevent the quality assurance information presented by members from being admissible in civil proceedings. We believe this is essential for our quality assurance program. This program includes, for our members, a self-assessment component. In order to achieve improvements in their quality of practice, members are required to be reflective and assess their current knowledge, skills, attitudes and to identify the needs and opportunities for improvement. We are just in the process of implementing the QA program. We are asking our members to identify areas where they need improvement, to identify how they can improve, and to put in quantitative measures so that at the end of the year or two years they know whether they have achieved that. This will be a yearly process, and we feel that for this program this provision would encourage our members to be candid in their self-assessment without fear that this

information could then be provided or would have to be provided against them in civil proceedings.

**Complaints about sexual abuse:** The proposed amendment to subsection 26(3) of schedule 2 of the RHPA clearly delineates the type of sexual abuse that cannot be referred by a complaints panel to the quality assurance committee. This is a positive move towards protecting the interests of the public, clarifying what stream the complaint should take, whether it should go as professional misconduct or to the QA committee.

**Complaints made in bad faith:** You heard the College of Physicians and Surgeons talk about that. It's probably a bigger issue for them than it is for us, but we believe that the committee should have the right, while doing an initial investigation, not to have to proceed with complaints that are frivolous or vexatious or made in bad faith. We believe there are sufficient safeguards in the current amendment, both for the complainant and for the member, and that the requirement to refer the complaint to the complaints committee will remain. Both the member and the complainant will be given notice of the college's intention not to investigate if a complaint is found to be frivolous or vexatious. In addition, both parties will be given the opportunity to make submissions to the college. CDO expects this provision to be used sparingly and with great care.

**Standards of practice:** The addition of subsections (1)(n), (1.1) and (1.2) under section 95 of schedule 2 of the RHPA enables each college to make a standard of practice regulation which can refer to other documents. This will provide colleges with legal power to enforce practice standards. The provision also ensures that future changes to these standards are recognized and enforceable immediately. Most important, this amendment will promote widespread use of these documents and ensure the maintenance of current standards, and would also, we could add, protect members of the public.

**When information can be withheld:** The CDO supports the addition of subsection (3.1) to section 23 of schedule 2 of the RHPA, which gives the registrar the power to refuse disclosure of a member's business address and business telephone number when there is reasonable grounds to believe that this disclosure of information may jeopardize the member's safety. We understand that this is a balancing act of confidentiality and also our role as the regulatory body, but this is particularly important to our college as the vast majority of its members are female.

**Changing of regulations to bylaws:** Overall, the proposed amendments to subsection 94(1) of schedule 2 of the RHPA represent a step towards streamlining the administrative process. The college supports the conversion of the administrative regulations to bylaws.

For much the same reasons, we are supportive of the next section, the setting of fees. We just want to add and emphasize in that paragraph that it is essential that the proposed amendment to section 24 of the code allowing suspension for non-payment of fees be passed simultaneously.

I now would like to address three issues that we have some concerns about as a college and hope that there could be changes before the bill is enacted. The first is late submissions. The proposed addition of subsection (1.1) to section 26 of schedule 2 would make it an obligation for the complaints panel to consider late submissions under certain conditions. There is a potential danger, or least potential entanglement, that this provision may be used to prolong unnecessarily the complaint process, thus making it difficult for the complaints panel to dispose of complaints within 120 days, which is the statutory limitation specified in subsection 28(2). We would hope that could be changed from "shall" to "may." Again, there are some rationales set out in the act, but we feel that would be of benefit to the complaints committee.

**Non-exemptible registration requirements:** In order to ensure that the non-exemptible registration requirements prescribed by the college are truly non-exemptible, the college recommends that the proposed amendment (1)(d) to section 95 of schedule 2 be adjusted to read "prescribing certain registration requirements as non-exemptible requirements for the purposes of subsection 18(3) and subsection 22(8)," which is the non-exemptible clause.

**Disclosure of criminal behaviour about a member to the police:** The additions of clause 36(1)(d.1) and subsections 36(1.2), 36(1.3) and 36(1.4) permit the disclosure of criminal behaviour about a member to the police. This is a good amendment because colleges have in the past been in a position to become aware of significant criminal behaviour but they were precluded, because of the confidentiality, from bringing this to the attention of the police. However, CDO is concerned that the wording suggests that criminal behaviour by employees of the college cannot be brought to the attention of the police, and that may, in terms of administration, have a much wider implication in disruption of the carrying on of the college.

That concludes our brief. We would like to thank the committee for this opportunity to be before you, and we hope that your deliberations can include some of what we have talked about today.

1740

**The Chair:** Thank you very much for your presentation. That allows us just under two minutes per caucus. We begin with the third party.

**Ms Martel:** Thank you for coming today. I was curious about the last statement you made with respect to disclosure of criminal behaviour. What is it in the wording that leads you to feel that criminal behaviour cannot now be brought to the attention of the college?

**Ms Shirley Lee:** The wording that is used specifies "member," which refers to member of the college, which doesn't include the staff of the college.

**Mr Dawson:** There may be cases where that could be brought forward but it's not clear in the actual wording.

**Ms Martel:** Is there a proposal you could make that would make you more comfortable in terms of having the law reflect what you hope is a situation that would be helpful to you?

**Ms Lee:** I think if the wording can be broadened, not just to focus on members only —

**Mr Dawson:** But also staff.

**Ms Lee:** We're employees.

**Ms Martel:** I'm just curious: How many complaints have you had registered? I take it from your earlier comments that the college itself is relatively new, so I'm not sure what your track record is.

**Mr Dawson:** We're still at the end of the initial five-year start-up period. We don't receive that many complaints, certainly nothing in comparison to the College of Physicians and Surgeons.

**Ms Lee:** So far we've received, on average, two a year. I think part of the reason is because the college is not yet well known; it's very new.

**Mr Dawson:** There are issues that we would like to address, but not related to this bill, in terms of public understanding of what the regulatory authority of the college is.

**The Chair:** We now move to the government members.

**Mr Hudak:** Thanks to you both for your presentation. In fact, Mr Dawson's reputation precedes him. Our parliamentary assistant, Mrs Ross, speaks very highly of you, so the least we can do is take your proposed amendments into very serious consideration or else Mrs Ross will come after us.

**Mr Dawson:** As long as that doesn't impair the voting of the opposition members.

**Mr Hudak:** Thank you very much for your support. There are a number of issues here that frankly are long overdue that this government is acting upon, and we appreciate your support, especially for the first — you list about six or eight different things.

One thing in particular that we haven't had a chance to address yet in this committee: The theme of the bill is cutting red tape to allow the colleges, in this particular part of the act, to attend more of their time to their most important duties. In your opinion, why is it important to allow the colleges to work through bylaws as opposed to going through regulations with the ministry?

**Mr Dawson:** I think there are a couple of aspects to that. The first one is that it's done at the council level rather than then having to deal with the various bureaucracies within the Ministry of Health, through legislative branch, through legal counsel up to the cabinet and ultimately being sealed after cabinet approval, where within the bylaws you can change it.

In particular with the issue as it relates to standards of practice, we can relate to a number of documents that we have generated or that have been generated within the profession that will allow us to earmark that. As times change those standards of practice change and therefore they become immediately enforceable; otherwise, as health care changes, as the role of dietitians changes within the province, we would have to go back through the process. That would be a very cumbersome thing. It would tie up a number of legislative committees and ultimately the cabinet of the province. I think it's a major, significant



change in terms of how colleges can administer themselves but still have that protective edge.

**Ms Lee:** I also would like to add that the regulations that were changed to bylaws are all administrative regulations. Any regulation that is aimed at protecting the public still remains in the regulation section and we support that.

**The Chair:** We now move to the official opposition.

**Mr Crozier:** Thank you, folks. I want to draw your attention to your suggestion that you're concerned about the criminal behaviour of employees being reported. I take it that no other part of the RHPA applies to employees. In other words, the RHPA is for members of various colleges.

**Mr Dawson:** Yes.

**Mr Crozier:** To suggest that in one little section you include employees — I think we should be very careful if we look at that. In fact, maybe counsel or somebody can advise us on that. I know your intent and I think your intent is good, but the act doesn't apply to employees, so my suggestion would be it has to be handled a different way than through the RHPA.

**Ms Lee:** This is the college's suggestion. Your point is certainly respected. Where we are coming from is that the college's main role is for the protection of the public. The role of the staff or employees of the college certainly has impact, because members of the college are also members of the public. That's where we're coming from.

**Mr Crozier:** OK. I think we understand each other. I'm just saying it may be a big problem area and the act doesn't apply in any other way to employees. I point that out.

**Mr Dawson:** There may be other ways to address it. It's simply that as we open up that aspect of it to include members so the college now has to turn it over to the police, it leaves a gap there. Whether this is the appropriate place to do it or there is some other legislation —

**The Chair:** Thank you very much for your presentation today. We very much appreciate you coming forward.

#### COLLEGE OF MEDICAL RADIATION TECHNOLOGISTS OF ONTARIO

**The Chair:** We now ask our last presenters of the day to come forward, the representatives of the College of Medical Radiation Technologists of Ontario. Thank you for coming. You may begin.

**Ms Sharon Saberton:** Chair and members of the committee, I am Sharon Saberton, the registrar of the College of Medical Radiation Technologists of Ontario. With me today is the president, Mr James Roberts, from Ottawa, and our legal counsel, Debbie Tarshis, representing Weir and Foulds. I thank you on behalf of the College of Medical Radiation Technologists of Ontario for providing this opportunity to address two important issues with respect to Bill 25.

The College of Medical Radiation Technologists is the regulatory body which governs approximately 5,200 medical radiation technologists in Ontario. The council of the College of Medical Radiation Technologists of

Ontario is made up of both publicly appointed persons and members of the college who are elected by medical radiation technologists. The council of the college discussed the Red Tape Reduction Act both at their July 17, 1998, and their September 25, 1998, meetings. The mandate of the council is to work in collaboration with the college membership to safeguard the public interest, and it is in the spirit of this mandate that the following recommendations are made.

First, the College of Medical Radiation Technologists of Ontario would like to commend the government for its work on Bill 25. For the most part, the college is of the view that the changes proposed in schedule G are both appropriate and helpful to the college in conducting its work in the public interest. There are, however, two provisions of schedule G which the college feels strongly should be amended. The following two points are supported by council as important issues to present to your committee today.

The first issue relates to section 7(1) of schedule G, which amends section 36(1)(d) of the Regulated Health Professions Act, the RHPA. I refer you to page 107 of Bill 25. This section amends the exceptions to the confidentiality provision of RHPA. Section 36(1)(d) has been expanded to permit disclosure as may be required for the administration of the Healing Arts Radiation Protection Act, the HARP act, and the Laboratory and Specimen Collection Centre Licensing Act.

We suggest that the drafting of this exception should be changed to permit more flexibility for the college to make a disclosure. We suggest adding the words "or in connection with" so that the amended subsection 36(1)(d) will read as follows: "as may be required for or in connection with the administration of the Drug Interchangeability and Dispensing Fee Act, the Healing Arts Radiation Protection Act...." etc.

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In our view, the words "as may be required for" may not be broad enough to expressly permit the college, on its own initiative, to disclose information to the X-ray inspection service of the Ministry of Health, because there are no requirements under the HARP act for a person, such as a member of the college, to report breaches of the HARP act of which the college becomes aware. We feel this proposed amendment would expressly permit the college to share information with the X-ray inspection service should the college become aware, as a result of a complaint, an investigation, an assessment or otherwise, that a person is operating an X-ray machine without the required certificate of registration from the College of Medical Radiation Technologists of Ontario, contrary to the provisions of the HARP act. This proposed amendment is in the public interest because it would support the college's ability to report to the X-ray inspection service on the college's initiative where the college becomes aware of breaches of the HARP act.

The second issue relates to section 23(1) of schedule G of the draft bill, which amends section 95 of the Health Professions Procedural Code — the regulation-making

powers of the college — and includes a new subsection 1.4 respecting circulation of a proposed regulation. I refer you to page 117 of Bill 25.

This amendment proposes a new requirement that a regulation shall not be made unless a proposed regulation is circulated to every member at least 60 days before it is approved by the council. As has been evident from the regulation-making process to date, the regulation-making approval process involves negotiation with the Ministry of Health, professional relations branch and legal services branch, and the Attorney General's office. A proposed regulation that is first approved by council may have many changes before it is in a form which is acceptable to the Ministry of Health and the Attorney General's office. Changes made to a proposed regulation as a result of comments received from the Ministry of Health and the Attorney General's office frequently require further approval by council.

Because of changes to the original regulation proposed by the college through this negotiation process, we are concerned that as this section stands it may require that the college recirculate a proposed regulation to the members a number of times. This would entail multiple mailings to the membership of the college, with the associated costs for mailing and production, and in addition would, in the case of more complex regulations, entail an overwhelming paper flow to the members as we sought their input on each version of a proposed regulation. Our recently passed quality assurance regulation, for example, went through seven different versions before it achieved final passage. These different versions included substantive changes to incorporate the policy and legal requirements of the Ministry of Health.

The intended purpose of this new subsection 1.4 is to encourage consultation with members, a goal which we wholeheartedly embrace. The requirement may, however, defeat this purpose because the only efficient way to deal with the requirement in the end may be to distribute the proposed regulation only after it has received a final signoff from the Ministry of Health and the Attorney General's office.

We would suggest that either (1) this requirement be deleted and we continue with the current process where the Ministry of Health requires confirmation that consultation has been made with the members prior to the regulation proceeding to cabinet for approval or (2) subsection 1.4 of section 95 of the Health Professions Procedural Code be changed to clarify the stage at which the proposed regulation is to be distributed to the members of the college.

We therefore propose that subsection 1.4 be amended to read as follows:

"A regulation shall not be made under subsection (1) unless the regulation proposed by the council to the minister for review is circulated to every member at least 60 days before it is initially approved by the council."

We believe that consultation with the members has been taking place in accordance with the current Ministry of Health's processes. However, if it is necessary to

formalize this process into a legislative requirement, we believe it is imperative to be clear at what stage in the regulation-making process consultation is to take place. We also believe that this suggested amendment would clarify the appropriate consultation stage to permit optimal input from our members.

Thank you for your kind attention, and I would be pleased to entertain any questions you may have.

**The Chair:** That affords us approximately two minutes per caucus for questions. We begin with the government members. We will have to recess for the vote, which will allow us to come back for the questions after the vote, so this committee will sit — that was quick. I believe the vote has been deferred, so we will continue with the questioning until we hear otherwise. We begin with the government members.

**Mr Hudak:** Thank you for your presentation and the detailed suggestions that you've given the government. Just to make sure I have it on the record from your point of view, some of the other groups talked in generality about the changes in this act. I want to make sure you're supportive of that. For example, the frivolous and vexatious dismissal, you're supportive of what's in the bill?

**Ms Saberton:** Yes.

**Mr Hudak:** And the protection of quality assurance, for example? How about the changing of regulation powers to the ability to make bylaws, in general?

**Ms Debbie Tarshis:** The college intends to make a written presentation, but for purposes of the oral presentation we really wanted to take the opportunity to commend the legislation overall on what it's doing but raise the two particular points. But yes, the college is supportive of changing the regulation-making powers to bylaws and the QA confidentiality.

**Mr Hudak:** To your particulars, I'm glad you brought them up, because you're the first group that brought them up to this committee at this level. Can you explain how it operates currently in terms of proposed regulations circulating to your members for their input.

**Ms Saberton:** For example, the quality assurance regulation, because it was a whole new notion, was introduced through Insights, which is our publication to our members. Then there was consultation with our members, with me visiting all five centres in Ontario. We reached 1,000 of our members through teleconferencing, so there was dialogue about the proposed regulations at that very early stage, and consultation continued right up until the point we developed our regulations and they went to our council for approval.

**Mr Hudak:** In the case of a complex regulation, you're very concerned that the changes in Bill 25 will cause repetition of this being delivered to members, and that sort of thing.

**Ms Saberton:** That's right.

**The Chair:** Thank you, Mr Hudak. We'll move to the official opposition.

**Mr Crozier:** I suspect what the member opposite was getting at is that the proposed changes could create more red tape than you have at the present time, and that's not



the objective of this legislation. I appreciate your suggestion that it be amended so members still may be informed, which I assume you agree they have the right to be. It's hard to speak in generalities, but I suppose not too many regulations, even if they do go through consultation with the government and amendment, change their intent at least. So I think your solution is fine. You consult with your members, you go on and work with whomever you have to, but generally the intent of the amendment isn't changed. I don't see any problem with that.

**The Chair:** We now move to the third party.

**Ms Martel:** Thank you for coming today. I was curious about the first amendment because I was wondering what happens now without this amendment being in place. If the college becomes aware that someone is operating without a certificate, are you not in a position now to inform the ministry about that? If so, what happens to that

individual and what happens to the public member at this point?

**Ms Tarshis:** That's really an issue of legal interpretation of the other disclosure provisions of section 36(1). We would like it clarified so it's absolutely clear that the disclosure is permitted.

**Ms Martel:** So right now you would do this, but using discretion, which would make people uncomfortable or worry about protecting yourself as well, or protecting the college.

**Ms Tarshis:** That's right.

**The Chair:** Thank you very much for your presentation today. We very much appreciate you coming forward. At that, this committee is recessed until Tuesday, October 13, at 1700.

*The committee adjourned at 1800.*





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Deuxième session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 13 October 1998

# Journal des débats (Hansard)

Mardi 13 octobre 1998

Standing committee on  
administration of justice

Red Tape Reduction Act, 1998

Comité permanent de  
l'administration de la justice

Loi de 1998 visant à réduire  
les formalités administratives



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Tuesday 13 October 1998

Mardi 13 octobre 1998

*The committee met at 1659 in room 228.*

## RED TAPE REDUCTION ACT, 1998

LOI DE 1998 VISANT À RÉDUIRE  
LES FORMALITÉS ADMINISTRATIVES

Consideration of Bill 25, An Act to reduce red tape by amending or repealing certain Acts and by enacting two new Acts / Projet de loi 25, Loi visant à réduire les formalités administratives en modifiant ou abrogeant certaines lois et en édictant deux nouvelles lois.

## COLLEGE OF NURSES OF ONTARIO

**The Chair (Mr Jerry J. Ouellette):** At this time we call our first presenters, if the representatives of the College of Nurses of Ontario could come forward. If you could identify yourselves for Hansard, we would appreciate it. There is a total time allocated of 15 minutes. At the conclusion of any presentation you may have, the time is divided equally between the three caucuses. Thank you for coming. You may begin.

**Ms Gail Siskind:** Good afternoon. I'm Gail Siskind, the director of investigations and hearings for the College of Nurses of Ontario. Joining me in making the presentation and answering your questions is Barbara Sulzenko-Laurie, the director of policy and director of external relations. Barbara will begin our presentation.

**Ms Barbara Sulzenko-Laurie:** The College of Nurses of Ontario is pleased to make a submission to the committee on administration of justice in the matter of the review of the health professions sections, schedules G and H, of Bill 25, the Red Tape Reduction Act.

CNO is the regulatory body for nurses in Ontario. We have approximately 140,000 nurses, registered nurses and registered practical nurses who are our members.

The Red Tape Reduction Act is a unique opportunity for the provincial government to streamline and reduce red tape in the health professions regulatory system. Our submission will focus on four sections of the bill. The first, section 13(3.1), provides discretion to a college to refuse the release of a member's business address and telephone number to protect a member's safety. The second, section 19, stipulates that quality assurance, or QA, records are not admissible in evidence in a civil proceeding except in a proceeding under a health profession act. The third provision this submission deals with is

section 15(3), paragraphs 4 and 5, which gives the complaints committee the authority to take no action with respect to complaints it considers to be "frivolous, vexatious, made in bad faith or otherwise an abuse of process." We will also address a fourth provision, section 15(1), which relates to the time frame allowed for members' submissions in response to a complaint.

**Members' safety regarding disclosure:** We are pleased to support the inclusion in this legislation of section 13 (3.1) giving colleges the discretion to refuse information about a member's business address and telephone number in situations where to do so would jeopardize a member's personal safety. This is an important exception to the Regulated Health Professions Act's requirement for colleges to facilitate access by members of the public to the information they would need to contact an individual member. While we strongly support the objectives of the existing provisions, we have recognized that there are occasions when providing this information can put a member's safety at risk. We have expressed our concern to government through the development of this legislation and we welcome the response that section 13(3.1) provides to this potentially serious problem.

**The confidentiality of quality assurance records:** Section 19 of the Red Tape Reduction Act will protect QA records from being admitted into evidence in a civil proceeding other than a proceeding under a health profession act. It is our view that this protection is necessary to ensure the integrity of our quality assurance program and its role in fostering continuous improvement in nursing practice.

The Regulated Health Professions Act requires that quality assurance programs require a component that will "promote continuing competence among the members." It is in response to this requirement that we and a number of the other health regulatory colleges have developed quality assurance programs that contain a reflective practice component. This component includes the completion of a self-assessment, the obtaining of feedback about one's practice from a peer, and the creation, implementation and evaluation of a learning plan. Members who are actively practising nursing are expected to participate in all of these activities on an annual basis. Participation in reflective practice became a requirement of all registered nurses and registered practical nurses in 1998.

Earlier I distributed to the clerk and, through him to you, copies of some of our materials around our reflective practice program at the College of Nurses.



The purpose of our reflective practice program is to bring about each member's identification of and improvement upon issues affecting the quality of her or his practice. For it to be effective, nurses must be able to completely fulfill the reflective practice component of the quality assurance program without fear that their records will be used against them in a civil proceeding. This view is supported by the underlying premise of the RHPA that quality assurance programs are meant to be facilitative, not punitive, and that candid and open reflection by health professionals will result in the improvement of practice and thereby benefit client care.

I'll turn the mike over to my colleague, Gail Siskind, to complete the presentation.

**Ms Siskind:** In respect of frivolous and vexatious complaints, we also want to express strong support for section 15(3), paragraphs 4 and 5 of Bill 25, which give the complaints committee the authority to take no action with respect to complaints it considers to be "frivolous, vexatious, made in bad faith or otherwise an abuse of process." This provision would enable us and other health regulatory colleges to develop a process that would allow for the identification and efficient disposition of complaints which have no merit.

Under the existing provisions of the RHPA, there is no authority for the complaints committee to identify and give expedited treatment to its review of frivolous complaints. This produces consequences that are negative for the efficient allocation of resources, for the nurses who are the targets of frivolous complaints and for the protection of the public.

The process of investigating and reviewing complaints is costly in terms of both fiscal and human resources. It can provoke a great deal of anxiety for the nurse who is the subject of a complaint and who, with the college and complainant, will then participate in the process leading to final resolution. In cases of complaints that are made in good faith and reflect a genuine concern about some aspect of a nurse's conduct or practice, such costs are a legitimate part of the responsibility of the nursing profession to protect the public from unsafe, incompetent or unprofessional nursing care.

When, on the other hand, a complaint is frivolous or vexatious, the need to treat that complaint with the same weight and investment of investigative resources can divert our resources from complaints that may contain serious client care concerns. For the member, a frivolous complaint can bring a high level of stress and anxiety, as well as considerable frustration with a process that by law cannot distinguish between a serious matter and one which may be entirely unrelated to the member's conduct and abilities as a nurse.

For the benefit of the committee, we could illustrate the kinds of complaints that on the face of it would likely fall into a category of "frivolous" or "vexatious." These are examples of actual complaints we've received:

A person complained about the actions of a neighbour who was a nurse. The issue between the two parties related to the nurse allegedly throwing an object on the

neighbour's lawn. The matter bore no relationship to patient care, nursing practice or public safety.

A complaint was made about an ex-spouse who was a nurse. The issues were related to child custody and other family law matters.

A complaint from a client in a residential environment concerned the colour of furniture, television and lighting. There were no issues in the complaint related to nursing practice or care.

Under the existing legislative provisions, the complaints committee had no authority to declare these complaints frivolous and unrelated to our mandate, but rather was required to process all of them as though they were complaints about the quality, competence and/or safety of nursing services.

In addition to the misallocation of resources that the work on these kinds of cases represents, their presence can have a negative effect on members' perceptions of the objects of the college's disciplinary activities. We believe that respect and co-operation from our constituent members is compromised when we are required to carry out costly investigations into expressions of dissatisfaction about members that are completely unrelated to the purposes of the complaints and discipline process as envisaged by the legislation.

In this bill, as well as in the RHPA, there are effective safeguards against any possible misuse of the provisions that will permit colleges greater discretion in relation to frivolous and vexatious complaints. These include the requirement for the complaints committee to give notice to the parties of its intent to take no action in such cases and to allow them to make written submissions on the issue. An additional safeguard is the right of a complainant to appeal any decisions of the complaints committee to the Health Professions Board, to become the Health Professions Appeal and Review Board.

Once Bill 25 is enacted, our complaints committee will begin to develop policies and procedures to follow in making a determination as to whether a particular case should be considered frivolous, vexatious, made in bad faith or otherwise an abuse of process. Through these policies and procedures, the committee will ensure that such cases are dealt with in a consistent manner and are assessed against a common set of criteria.

Our last issue to make a submission on is the member's opportunity to respond. In this section 15(1) of this bill, it would amend an existing provision of the RHPA that states that a panel "may" consider submissions from a member who is the subject of a complaint after the expiry of 30 days, changing this to one that would "require" a panel to consider submissions made after 30 days. We do not view this amendment as serving the public interest because it would likely increase the delay in the receipt of submissions from members once it became an expectation that an extension must be granted or it became known. As a result, the time period for consideration and disposition of matters would be unduly lengthened.

Our usual practice is to exercise the discretion provided in the existing legislation to permit extensions of the time for members to make submissions, if requested. We do so

in order to give them the opportunity to make a full and complete response to a complaint. We're concerned, however, that making the granting of extensions mandatory would be prone to abuse. In order to ensure our continued ability to carry out the investigation of complaints in a timely and efficient manner within the 120-day legislated time frame, we would support the maintenance of the existing permissive language regarding this matter.

This concludes our presentation. We look forward to answering any questions you may have.

**The Chair:** Thank you very much for your presentation. Unfortunately, that only allows us enough time for one caucus to have questioning. At this time, it's the third party.

1710

**Mr Peter Kormos (Welland-Thorold):** I suppose on this last issue that you raised — because I read the bill very carefully in juxtaposition to your comments on it — it seems there's still discretion because the member gives reasonable grounds for his or her delay, so you can't simply abuse the process. I hear what you're saying, but this is your own membership that you're talking about, right? I would have thought, to the contrary, that you'd be advocating for your membership, that they would have every possible opportunity to respond to a complaint.

**Ms Siskind:** They do under the current legislation. I think where we differ is that with the inclusion of this amendment, it puts the emphasis on the need to request an extension rather than on the need to have a timely disposition of the complaint. There's no doubt in my mind that we would have a very similar process to what we do right now. Right now, we only have maybe one or two complaints every month for which we have a request for deferral that is made by the member. That's a very small number. We usually give much more than the 30 days' notice to make the submission.

When the Health Disciplines Act was in force, there was a great deal of concern related to the timeliness of disposition of complaints. It was unrealistic; it was 90 days. It actually wasn't stated in the same way. The 120 days was carefully considered as the time that it could take for an adequate investigation to take place and the member's submission to be made. The emphasis is on that because it is a screening committee. It is not necessarily a final determination committee. In order to make that process smooth and focused on the purposes of the screening committee, we want those submissions timely. We have the ability to extend the requirement for the submission to be in our hands without this amendment. Our concern is that the emphasis is on getting extensions rather than on timely disposition.

**The Chair:** That concludes our time. We thank you very much for coming forward with your presentation today.

#### HOECHST MARION ROUSSEL CANADA

**The Chair:** We call our next presenter, if the representative of Hoechst Marion Roussel Canada could come

forward. If you'd identify yourself for Hansard, please, we'd appreciate it. You may begin.

**Mr Anthony Ruta:** Good afternoon. My name is Anthony Ruta. I hold the position of director, government affairs, in the province of Ontario. My employer is Hoechst Marion Roussel Canada, a pharmaceutical company of the larger Hoechst corporation.

I'd like to thank the committee for the opportunity to address it on the subject of Bill 25. Specifically, I am here to comment on schedule G, subsections (19)(2) and (19)(3) of the act in section 49 of the bill pertaining to that part aimed at amending the Drug and Pharmacies Regulation Act of Ontario. Hoechst Marion Roussel Canada, by the way, manufactures and markets products such as Allegra, Anzemet, Cardizem, Nicorette and Nicoderm.

Hoechst Marion Roussel Canada strongly endorses proposed amendments to the Drug and Pharmacies Regulation Act as contained in Bill 25, schedule G, in the subsections already mentioned. These sections of Bill 25 establish the legislative authority of the Ontario College of Pharmacists to harmonize and maintain drug schedules which govern the availability of drug products in the province without having to obtain cabinet approval first. That may be with the possible exception of the initial set of schedules that will come forward.

For the past 10 years or so, Canada's provincial colleges of pharmacy, responsible for drug scheduling in Canada, have been working to harmonize drug schedules. Harmonization simply allows Canadian citizens to purchase the same drug product under the same conditions of sale in every province of Canada. For years, with the lack of harmonization, there were discrepancies in drug schedules from province to province. A product which could only be obtained with a doctor's prescription in one province could be obtained without one in another. This causes great confusion among Canadians as they travel or relocate from province to province. It is equally confusing to physicians who find themselves having to now prescribe a drug when they used to simply recommend it.

Harmonization of drug schedules would, first, eliminate such obvious discrepancies in provincial drug schedules, but then also, and more importantly, put a system in place which, as changes to schedules are required, would allow these to be made quickly and across Canada at the same time.

Such changes are required, for example, when Health Canada approves a new drug as non-prescription. The provincial government then determines via drug schedules whether the drug may be purchased freely (in self-selection) or only through a pharmacist (behind the counter). In the past, such an approval meant the drug could be categorized differently depending on the province where you lived.

In 1995, NAPRA, the National Association of Pharmacy Regulatory Authorities was established. One of the key objectives of this association, representing the registrars of the colleges of pharmacy across Canada, was to harmonize the different provincial drug schedules into one reference standard.



The National Drug Scheduling Advisory Committee (NDSAC), a subgroup of NAPRA, reviews current drug products in Canada and recommends their placement in specific drug schedules. The main objective is to classify non-prescription drugs, as this is within the jurisdiction of the provinces. Only Health Canada determines the prescription or non-prescription status of drugs in Canada. When the latter classification is given, the provinces then have jurisdiction to determine the conditions of sale; that is, self-selection or behind the counter in a retail pharmacy only; or available for sale in any non-pharmacy outlets.

Provincial colleges of pharmacy have expressed their desire to harmonize schedules according to the recommendations of NDSAC. Subsequently, provincial governments have either proposed or passed legislation allowing the College of Pharmacy to amend drug schedules according to the reviews of Health Canada and the recommendations of NDSAC.

The need for these amendments to the Drug and Pharmacies Regulation Act as contained in the bill, giving the OCP the necessary regulatory authority to amend drug schedules without cabinet approval, is clearly demonstrated by what has happened in Ontario with a group of products called nicotine replacement therapy or NRT products, specifically Nicorette 4 mg nicotine gum and Nicoderm, also known as the patch. Despite their deregulation by Health Canada to non-prescription status, making them available for sale without a prescription to consumers seeking help to quit smoking, these products continue to require a prescription in Ontario rather than be available to consumers on a self-selection or over-the-counter basis as recommended by the NDSAC group.

In 1993 Health Canada began to deregulate NRT products from prescription to non-prescription status. The clear intent was to encourage the provinces to make these products more accessible to people who were trying to quit smoking.

Tobacco-related diseases kill 12,000 Ontarians every year, one every 33 minutes. Tobacco-related diseases kill more people in this province than traffic accidents, suicide, homicide and AIDS combined. In a report written in 1996, the Chief Medical Officer of Health estimated tobacco had cost Ontario \$18 billion since 1991, \$10 million every day. There are very clear and significant benefits, therefore, to any effective measures aimed at reducing the number of smokers in Ontario or reducing their consumption of tobacco products. Improved access to NRT products is widely seen as one of these measures.

The first NRT deregulation occurred in 1993 and that was Nicorette 2 mg gum. It is now available behind the counter in retail pharmacies across Canada, and across Ontario as well.

In late 1996, NDSAC reviewed and then recommended that the nicotine patches be placed in self-selection areas of retail pharmacies across Canada; that is, over the counter. Health Canada's deregulation of the patch to non-prescription status on June 1, 1998, was made with the full expectation they would be placed in the self-selection area of retail pharmacies across Canada.

The only barrier, therefore, to increased consumer access to these effective smoking cessation products in Ontario is a positive decision by the Ontario government to harmonize its drug schedules as recommended by NDSAC and OCP. Increased consumer access is supported by many other stakeholders, among them the Allergy/Asthma Information Association, Canadian Council for Tobacco Control, the lung association and many others.

Ontario stands alone as the only province that still requires a doctor's prescription to access all nicotine patches and 4 mg Nicorette gum. In essence, it remains easier to buy cigarettes in Ontario than products designed to help people quit smoking.

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The specific history on deregulating these products in Ontario goes back over a year. A request for regulation changes to move NRT products from their current place in Ontario schedule F was made by the OCP to the Ministry of Health in late June 1997. The Ministry of Health gave its full support to the self-selection recommendation.

The requested changes entered Ontario's current cabinet process for drug scheduling amendments on or about late July of 1997. Feedback received by the OCP in August or early September was positive. However, after weeks of delay the OCP learned that cabinet did not approve the proposed change. Two reasons were given.

It was suggested that deregulation would cause "increased consumer access to nicotine products used for smoking cessation." Rather than a concern, this was the whole purpose of deregulation in the first place.

The second reason had to do with potential abuse by young people. However, research conducted in the US and elsewhere has shown teen abuse of NRT products is so low as to be virtually undetectable. In every country of the world where these products are available in self-selection there has been absolutely no indication of abuse by teens. Only people interested in quitting smoking have shown the slightest interest in NRT. This information was thoroughly reviewed by the Ministry of Health prior to its initial recommendation.

Now, a year later, we have been unable to obtain any specific information from the Premier's Office or other government officials as to why they do not agree with other provinces on this issue.

The proposed changes to the Drug and Pharmacies Regulation Act contained in Bill 25 would allow drug schedules to be amended by those in government with the expertise to make such decisions without getting caught up in the lengthy cabinet approval process. It would make long delays, as seen in the current NRT situation, a thing of the past. Such harmonization is good for the government, for the consumer, for taxpayers, for the retail pharmacist and for the many companies which do business in Ontario.

On behalf of Hoechst Marion Roussel Canada, I urge the government of Ontario to act without delay in allowing drug schedules to be harmonized with Health Canada and other provinces without the need for all the red tape.

I would further ask that this committee formally recommend, prior to any later implementation of Bill 25, that cabinet give immediate consideration to making NRT products more accessible to all Ontario consumers in the self-selection area of retail pharmacies. This specific action can be taken now in complete accordance with the spirit and details of Bill 25 but without any further delay.

I would be pleased to answer any questions.

**The Chair:** Thank you very much. That affords just under two minutes per caucus. We begin with the official opposition.

**Mr Mike Colle (Oakwood):** Thank you for your very informative presentation, Mr Ruta. My understanding of your presentation is that with Bill 25 it's going to be possible, in essence, to allow Nicorette-type products to be acquired or purchased without a prescription. It's possible to do that under the framework of the bill, but cabinet, just this past year, had an opportunity to do that and did not allow that to happen. Do you see it as being mechanically possible, legislatively possible, for this to happen under this bill?

**Mr Ruta:** Yes, that's correct.

**Mr Colle:** Who would make that decision under this bill?

**Mr Ruta:** That bill would give the authority to harmonize the schedules directly to the College of Pharmacy.

**Mr Colle:** Therefore, this bill would allow it to be moved into their hands to undertake whatever change might be necessary.

**Mr Ruta:** Whatever change might be required; that's correct.

**Mr Colle:** The only problem is if there's still cabinet opposition to that and if they could still, through some mechanism, stop that from happening, because it seems their intent has been, earlier this year, to stop that from happening for reasons you gave. Therefore, you're a supporter of this bill because it enables the college to allow for the over-the-counter sale without prescription.

**Mr Ruta:** That's correct.

**The Chair:** We now move to the third party.

**Mr Kormos:** First, I want to tell you I'm very familiar with your products. You don't manufacture the pill. What's the purple little pill that —

**Mr Ruta:** That's a competitor's product.

**Mr Kormos:** I'm telling you, the side effects are everything they claim them to be. If I'm a little edgy —

**Mr Ruta:** It's actually a recycled anti-depressant.

**Mr Kormos:** What I'm concerned about is that some of these products are very expensive, no two ways about it — starting with Nicorette's gum through to the patch. They're not cheap products. Tell me what you have done from your industry's point of view to make sure that private drug plans — like, quite frankly, the one we have here as members of the assembly, which is similar to many of those provided in industrial workplaces — what has your industry done to ensure that once these products become over-the-counter drugs, they don't then fall out of the scope or ambit of drug plans. I think it's incredibly important. As I say, they're expensive products, let's

make no mistake about it. If the disincentive for somebody to have to pay for them out of pocket, if they have a drug plan, is considerable, that causes me — you say you want more access, but if they're not being subsidized for those people fortunate enough to have drug plans, then I'm saying, what are you really gaining?

**Mr Ruta:** I'm compelled, first of all, to point out that the cost of using these products is very similar, almost identical, to using tobacco products.

**Mr Kormos:** You don't have to persuade me, but you also know what I'm talking about. Cut to the chase here. They're not cheap.

**Mr Ruta:** No, these products have never really been extensively available on private health care plans, even when they were prescription products in other provinces. The fact that they are now going to move to over-the-counter status, as they have in many other provinces in the country, really doesn't have any impact on where they were on those plans relative to now. But what I can tell you is that the separate group within our company that is responsible for working with the private sector has been very encouraged by these people who are very willing to start adding these things to their plans in the very near future, and I know some have already done so. I don't have the names of the two big ones but I know that Blue Cross of Atlantic Canada is one such outfit and Blue Cross right across the country is looking at these. So these are being added to the private plans of many companies.

**The Chair:** We now move to the government members.

**Mr Tim Hudak (Niagara South):** Thank you, Mr Ruta, for your presentation. Just a question from your point of view at government affairs at HMR, one of the larger pharmaceuticals in Canada, on what steps the other provinces take at this time in terms of —

**Mr Ruta:** Essentially in other provinces this is virtually done, this type of legislation. As a matter of fact, the products I referred to specifically in my presentation are already extensively available over the counter in almost every province of the country. So many of the provinces have already enacted this kind of legislation and basically for the same reasons. They found that the transition from a ruling by Health Canada, by the time that actually became enacted in a schedule in a province, was a considerable and lengthy delay and this would speed things up very much.

**Mr Hudak:** So I guess the red tape that exists in Ontario and other provinces impacts your ability to market your product and reach the customers.

**Mr Ruta:** That's right, it certainly does.

**Mr Hudak:** I appreciate your support.

**Mr Ruta:** Thank you.

**The Chair:** Thank you very much for your presentation today. We very much appreciate you coming forward today.

**Mr Kormos:** Appreciating what has just been said, and appreciating that the parliamentary assistant may have to make enquiries, perhaps the committee could be told why cabinet, what the overlying rationale was for not



putting this front of the counter. There has to be some argument that was made that prevailed.

**The Chair:** We can ask the parliamentary assistant to look into that.

**Mr Kormos:** I'd be interested.

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#### ONTARIO SOCIETY OF CHIROPODISTS

**The Chair:** I call the last presenter of the day, the Ontario Society of Chiroprapodists. If you could come forward and identify yourselves for Hansard we would appreciate it.

**Ms Anna Georgiou:** Good afternoon. my name is Anna Georgiou and I am the president of the Ontario Society of Chiroprapodists. I am joined here today by Craig Hunt who is the chair of our government relations committee and the past president of the society.

We would first like to thank you for allowing us to appear.

We have provided copies of our remarks and supporting documents for your consideration.

I would like to start with a brief explanation of who and what we are. Chiroprapodists are the largest group of foot-care professionals in the province of Ontario. We are trained through a three-year joint program of the Michener Institute and the Toronto Hospital, General Division. Chiroprapodists practise across Ontario but it is fair to say that the majority of us serve the smaller to mid-size communities. As a medical profession we are governed by a college in the same way as doctors and dentists. The chiroprapody program as it is today came into existence in 1981 to ensure Ontarians had accessible, professional and affordable foot care.

The Ontario Society of Chiroprapodists is the college recognized voice of chiroprapodists in Ontario. There are currently 307 chiroprapodists practising across Ontario.

We are here today to speak specifically to a matter of duplication in our profession. This duplication has led to a great deal of public confusion, extra expense for the government and a barrier to us in running successful practices.

In Bill 25, schedule G, section 25 opens up the Chiroprapody Act, 1991, to amendment and it is for this reason we are here today.

In Ontario there are currently two different titles for foot-care providers. We have in this province both chiroprapodists and podiatrists. In no other jurisdiction in the world is the term chiroprapodist still in use. Podiatry is the internationally recognized term for the study and care of feet, in the same way that dentistry is the recognized term for the study and care of teeth.

We are requesting that an amendment be made that standardizes the title for the care of feet in Ontario to podiatry and that practitioners be called podiatrists just as in all other Canadian provinces and countries around the world.

This standardization of title will obviously eliminate duplication. It will not confer any additional rights or

privileges to practitioners currently called chiroprapodists. The standardization of title will not change anyone's scope of practice. Individual practitioners will practise to the extent authorized by the College of Podiatry just as the College of Chiroprapody does today. We have submitted to you a copy of the exact amendments proposed.

I now ask my colleague, Craig Hunt, to speak to specific reasons why the title standardization we propose is important

**Mr Craig Hunt:** As a practising chiroprapodist in south-western Ontario I am constantly faced with having to explain to would-be patients why I am called a chiroprapodist when I do what a podiatrist does. I explain that back in 1981, when the then provincial government decided they wanted to have Canadian trained foot specialists, they chose the title chiroprapodist so as to differentiate us from the American trained podiatrists that were already practising in the province. They chose this new name because they agreed to grandfather the practising podiatrists so they would not have to change their title. The legislation stated however that after July 31, 1993, no new foot-care practitioner regardless of their place of origin or their educational background could use the title podiatrist.

As a result of the grandfathering of the podiatrist title and the use of the term podiatrist around the world becoming the norm, the title chiroprapodist never became known. In the spring of 1997 the Ontario Society of Chiroprapodists commissioned the research firm Angus Reid to question the Ontario public about chiroprapody and chiroprapodists. The results of that work are in the package we have provided for you today.

Over two thirds of the 1,002 people asked did not know chiroprapodists treat feet and a mere 3% of those questioned would consult a chiroprapodist on foot concerns. This obvious lack of awareness acts as a significant barrier to accessing health care.

Chiroprapodists are paid for their services directly by the patient or through an individual private health care benefits program. Chiroprapodists are not covered by OHIP and the proposed title standardization would not extend OHIP billing rights to us. The difficulty arises, however, that as the title chiroprapodist is antiquated, very few private health care insurance companies recognize it. This means they won't honour claims made for services performed by a chiroprapodist, while if a podiatrist performs the same service the claim is paid.

The duplicate names for practitioners in our field causes public confusion. This in turn leads to a lack of access to health care for the public. This situation is directly opposite to what the government wanted to do when they introduced the idea of Ontario-trained foot-care specialists. The duplicate names have caused an additional burden of paperwork between practitioners and the insurance industry. Repeatedly we must advise insurers that chiroprapody is the official government-designated title for foot care in Ontario and that chiroprapodists are licensed providers.

Soon after the regime of dual titles started in the province, a complaint was filed with the Ontario Ombudsman

that private insurers were refusing to recognize chiropractors as professional foot-care practitioners because they were not called podiatrists. The Ombudsman's office agreed that this was discrimination based on title and agreed to consider the issue. The insurer then moved to settle this matter before a final ruling was made.

Once again chiropractors are considering launching a complaint to the Human Rights Commission due to continuing title discrimination by insurers. These complaints are costly and time-consuming for the government and all parties involved. The standardization of title would eliminate all this expense and lost time.

We want to make clear that we are not here to ask for OHIP billing privileges, nor do we want the government to direct insurance companies to incur the expense of changing all their contracts to include the term "chiropractors." Experience has shown us that chiropractic is just not understood, and it only makes sense to eliminate the duplication and move to the world-accepted, standardized title of podiatry. As a matter of fact, this is what Health Minister Witmer said to us earlier this spring with her comment, "It makes sense," when she gave us support for title standardization.

We hope our comments here today have helped you realize that it makes sense to eliminate the duplication that is causing extra expense to all involved and blocking access to health care. Thank you for your attention. We'd be pleased to answer your questions.

**The Chair:** Thank you very much. That allows us approximately two minutes per caucus. We begin with the third party.

**Mr Kormos:** I come from the Niagara Peninsula, where we actually have no quarrel with you. We've been doing it for years. We have an American doctor who comes in and is peripatetic around the region, apparently because of shortage of availability. You say you're not seeking OHIP. Some of the foot work you do was just delisted. It's a very aging part of the province, and statistically it's older people who have the foot problems you deal with. Aren't you concerned about the delisting?

**Mr Hunt:** Those services were covered under the services that physicians provide. So that delisting is of concern to us as well. Obviously, if there's a barrier where nobody knows what you do, which is what we're speaking to today, the people can't access our services.

**Mr Kormos:** But you're saying essentially that if we were to ask podiatrists, they would tell us that you have the same skills and skill level and training as they do? Or is there going to be an argument there?

**Mr Hunt:** There might be a small argument, a small interpretation. But for the majority of services that are provided by both groups, our training provides us to provide those services to the public.

**The Chair:** We now move to the government members.

**Mr Hudak:** Thank you for your presentation. Just out of curiosity, following up on Mr Kormos's question, what do those who are currently defined as podiatrists feel

about your proposed amendments? Do you have any opinions from that group of individuals?

**Ms Georgiou:** The Ontario Podiatric Medical Association has expressed concern that the standardization of the title would grant us OHIP coverage or that that is what we are seeking, and an automatic expansion of scope of practice. What we're clarifying here today is that we're not looking for that. We recognize that an expansion of scope of practice will involve further educational changes. This is just to standardize the title for foot-care providers. We are not seeking OHIP coverage.

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**Mr Hudak:** The college governs both chiropractors and podiatrists. At what stage is the college, right now, in terms of making a recommendation to the ministry or to the Red Tape Commission for a title change?

**Ms Georgiou:** The college has not taken a vote on this issue. There was a recent internal document, however, a discussion paper that was submitted by the members of the college council to stakeholders, which advocated standardization of the title, but that is still being discussed. It has not progressed.

**The Chair:** We now move to the official opposition.

**Mr Colle:** It seems very foolish that, in essence, we have two names for providers of the same service. It causes a lot of confusion. I agree with the Angus Reid finding that most Ontarians have no idea what a chiropractor does. I was unfortunate or fortunate enough to have their services, and my parents were too. They were just down the street at the hospital.

I think the critical thing is to get that commitment. Did the Minister of Health give her commitment in writing that she would support the standardization or was it a verbal commitment?

**Ms Georgiou:** It was a verbal commitment.

**Mr Colle:** I suggest you ask for that in writing.

I certainly think our party would support eliminating this contradiction, which doesn't serve the public of Ontario well, especially due to the fact that chiropractic was a name change issued by the Ontario government. Are there still practising podiatrists or people who are podiatrists who have gone to the States to get their podiatric qualifications and then come back here to practise?

**Mr Hunt:** There are, but not after 1993. No new people are registered.

**Mr Colle:** Therefore, in order to be a foot-care practitioner you have to get your qualifications, your chiropractic degree, here in Ontario.

**Mr Hunt:** Correct.

**Mr Colle:** Therefore, it's a Canadian degree and yet you can't get basically the same rights as the podiatrists, who got their education in the States years ago.

**Mr Hunt:** That's correct.

**Mr Colle:** The Ombudsman did nothing. It certainly seems discriminatory, and it especially discriminates against Canadians and Canadian schools. You've gotten nowhere with this discriminatory — so in essence, this bill opens the door for possible amendments. The question is,



who is to make the amendment to have the term standardized?

**Ms Georgiou:** We have included a proposed amendment in the package —

**Mr Colle:** I saw the proposed amendment. I guess what I'm trying to figure out is — to change the act, it would have to still go through this government, which would have to make that amendment. I think you should make your case public because, as I said, it's the people of Ontario who are suffering from foot disorders, or whatever you want to call them, who are not being well served, because they don't know the service exists.

I know a lot of people who are suffering, especially seniors, who aren't aware that there are specialists who can help them and they don't know where to go. They're

staying at home suffering with ingrown toenails, with everything under the sun. I think you should continue to make your case public. Again, it's the people out there who are literally suffering because of this complication and stupidity.

**The Chair:** That concludes your time. We very much appreciate your coming forward today.

Prior to adjourning this committee, I'd like to inform the committee, unless there's strong opposition, that written submissions presented to the committee are by Monday, October 19 at 5 o'clock and amendments presented to the committee by Wednesday, October 21 at 5 pm.

Seeing no opposition to that, this committee is adjourned until Monday, October 19 at 1700.

*The committee adjourned at 1745.*





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# Official Report of Debates (Hansard)

Monday 19 October 1998

# Journal des débats (Hansard)

Lundi 19 octobre 1998

## Standing committee on administration of justice

Red Tape Reduction Act, 1998

## Comité permanent de l'administration de la justice

Loi de 1998 visant à réduire  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Monday 19 October 1998

Lundi 19 octobre 1998

*The committee met at 1701 in room 228.*

## RED TAPE REDUCTION ACT, 1998

LOI DE 1998 VISANT À RÉDUIRE  
LES FORMALITÉS ADMINISTRATIVES

Consideration of Bill 25, An Act to reduce red tape by amending or repealing certain Acts and by enacting two new Acts / Projet de loi 25, Loi visant à réduire les formalités administratives en modifiant ou abrogeant certaines lois et en édictant deux nouvelles lois.

ONTARIO PROFESSIONAL  
PLANNERS INSTITUTE

**The Vice-Chair (Mr E.J. Douglas Rollins):** Ladies and gentlemen, if you will come to order, the committee is now open to accept presentations. The first presentation will be made by the Ontario Professional Planners Institute. Welcome to the hearings. You have 15 minutes, and you may use any portion of it that you'd like for your presentation. If there's any time left, we'll divide it equally among the three parties.

**Mr Ron Shishido:** My name is Ron Shishido. I'm the president of the Ontario Professional Planners Institute. With me is Tony Usher.

We represent more than 2,200 practising planners across the province. Through our affiliation with the Canadian Institute of Planners, we have the ability to speak with one voice on matters of importance to the planning profession across Canada. Our members work in both the public and private sectors, and practise in areas ranging from community planning and design, to land use, socio-economic, environmental planning and assessment and, of importance to today's proceedings, natural resource planning and management.

Over the years, our institute has worked co-operatively with the Ministry of Natural Resources on public policy matters as well as education and training initiatives. It is in that spirit of co-operation that we're here today to present our brief.

Mr Usher chairs our natural resources working group, which prepared the position paper for council. Tony will highlight the key points in the brief, and then we'll respond to any questions.

**Mr Tony Usher:** First, I should clarify that our interest in Bill 25 is limited to schedule I, which pertains, as you know, to the Ministry of Natural Resources. Consistent with our previous submissions to MNR on red tape reduction, our institute supports the government's efforts to update and simplify Ontario's statutes and regulations.

However, the institute has concerns about the proposed amendments to the Public Lands Act, which as you know take up sections 48 to 59 of schedule I. Sections 48 and 50 to 59 are red tape reduction amendments to which we have no objection. Our specific concerns are with section 49, which introduces a new process for land use planning on crown land, 87% of our province. We have no concern with any of the proposed amendments to other MNR statutes.

As I believe the committee would know, the Ministry of Natural Resources undertook a planning system review from 1992 to 1995. This provided much of the impetus for the amendments to the Public Lands Act that are in section 49. Our institute was involved throughout, and we made three submissions to the MNR. Then, in 1996, we were invited to participate in the MNR red tape review. We made two submissions. Our second submission was a response to the first reading of Bill 119, which was largely similar to schedule I of the present bill.

We have also been an active contributor to MNR's Lands for Life planning program, as an advocate of an open, inclusive, sound and transparent planning process. Our comments to you today reflect our participation in and contribution to these initiatives, and the positions we have consistently articulated to MNR over the last six years.

It has long been our view that the Public Lands Act is one of the keystone pieces of planning legislation in Ontario, along with the Planning Act and the Environmental Assessment Act. Our specific recommendations and positions on the Public Lands Act amendments are as follows:

(1) We congratulate the government on proposing to replace the completely outdated and inadequate section 12 of the Public Lands Act with new sections intended to provide a proper legislative mandate for planning the seven-eighths of our province that is crown land.

(2) We believe that the Public Lands Act needs a purpose or mandate statement for public lands planning. This was recommended by MNR's planning system review and we endorsed that recommendation, but it is not in Bill 25.



MNR's other major land planning statutes have purpose statements, as of course does the Planning Act itself.

(3) We believe that the Public Lands Act should require that before the Minister of Natural Resources approves or amends the land use planning guidelines referred to in the amendments, the minister will cause the guidelines or amendments to be made available in draft form and consult as she or he considers appropriate.

The land use planning guidelines will be an extremely important statement of policy and practice for planning in Ontario. Although much of what will be in the guidelines is prescribed by law in the province's other key planning statutes, OPPI can accept the guidelines approach in this case, provided there is at least a guarantee of consultation on the guidelines similar to that which is required for provincial policy statements under the Planning Act.

(4) We believe that the Public Lands Act should require that before the minister approves any land use plan, he or she will consult with any municipalities, planning boards and Indian band governments that are in or adjacent to the planning area. We agree with MNR that details of public involvement processes can be left to the land use planning manual. But we have repeatedly expressed concerns over the years that MNR does not adequately address the role of municipalities as planning partners, and we believe that a basic legislated commitment to consultation with local planning authorities before plans are approved is essential.

(5) We are pleased to see the addition of a new section, 12.2(4), which requires the minister to give notice of intent to approve or amend a plan. This is an improvement on Bill 119, which we advocated.

(6) Our institute has consistently argued that planning on public lands must be subject to an appeal process that is independent of MNR and, equally important, perceived to be independent. We believe that the objection process set out in the proposed section 12.3 does not go nearly far enough in this direction, and we believe that process will be seriously lacking in credibility.

In advocating an independent appeal process, OPPI agrees with MNR's planning system review that any process must be timely and efficient, and that appeals must be clearly limited to public land and resource planning, not to other matters.

Nevertheless, we believe that the Public Lands Act should provide for clearly defined rights of appeal to an existing or new appeal body that does four things: first, operates according to procedures prescribed by regulation; second, is appointed by the Lieutenant Governor in Council on the advice of the minister; third, is empowered to hold joint hearings with other boards; and fourth, is empowered to promote alternative dispute resolution.

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The Ontario Municipal Board is an excellent model for what we are talking about and it could serve as an appeal body for the Public Lands Act, as it currently does for the Aggregate Resources Act, another MNR statute. However, many other equally valid and potentially more modest alternatives are also available. Our institute would be

very pleased to work with MNR to consider and evaluate the available alternatives.

On this matter of appeal, I'd just like to make the comment that we as planners believe that an independent, credible and formal appeal process will be used, but only in a very small minority of cases. We also believe that in the vast majority of cases where there are disagreements, having that process in place may be an incentive for the parties to settle their own affairs without resorting to that appeal process, and to do so more expeditiously than at present, and with greater confidence and certainty in the results.

We also understand that Bill 25 will not apply to the regional strategies or plans that result from the forthcoming recommendations of the Lands for Life round tables, which have been at work over the last year and a half. We appreciate that most of the planning and public consultation in this regional planning process have already taken place. However, if the regional strategies are not considered plans for purposes of the amendments before you, then they will not be subject to any appeal process, now or in the future, even to the limited objection process that is proposed in section 12.3.

(7) Our final point is that we are somewhat surprised that a bill about red tape reduction does not address the overlap that exists between section 13 of the Public Lands Act and section 47 of the Planning Act, with respect to land use controls on private lands in unorganized areas. Both sections provide overlapping powers.

Those are our key points, Mr Chair and members of the committee, and we elaborate on these a bit more in our brief.

To conclude: Introduced amid a wide variety of red tape reduction measures, section 49 of schedule I provides for the first time a clear legislative basis for planning in seven-eighths of Ontario. We congratulate the government on proceeding with this long-overdue initiative. It's an initiative that's so important that the government and the Legislature should not fail to give it the attention it deserves, and to get it right.

To that end, the Ontario Professional Planners Institute is prepared to offer any assistance it can to the further improvement of these important proposals. We thank you for your time, and we wish you the best in your deliberations.

**The Vice-Chair:** Thank you very much for your presentation. That leaves us approximately one minute per caucus.

**Ms Shelley Martel (Sudbury East):** Thank you for coming today. I would like to ask a question about point 7, where you say the bill doesn't address overlap issues on private lands in unorganized areas. Can you give the committee some idea of what those areas of overlap are?

**Mr Usher:** I don't want to get into too many technical details, Ms Martel, but basically both sections provide a power to regulate and zone land use on private lands in areas outside municipalities. In the Planning Act it's under the general powers that the Minister of Municipal Affairs and Housing has in that regard, to issue orders for lands in

Ontario. In the case of the Public Lands Act it's a special power that applies just in those situations. I think that's the brief answer.

**Ms Martel:** You talked about an independent appeal process. Did MNR's planning system review advocate a particular appeal process?

**Mr Usher:** I would have to go back and look, but the process that the planning system review advocated was generically similar to what's in the bill. For example, they did not advocate the kind of thing we're advocating, and then the bill is different.

**Mrs Lillian Ross (Hamilton West):** Thank you very much for your presentation. On page 2 of your presentation, point 4, you talk about the minister consulting before approving any land use plan. Then in number 5 you say that you're pleased to see the addition requiring the minister to give notice of intent to approve or amend a plan.

It seems to me that by posting that notice of intent to approve or amend a plan, the minister is doing exactly what you want him to do by consulting with anybody who is particularly interested. Could you comment on that?

**Mr Usher:** I appreciate your point. It is arguable that it may depend on how these things are defined in the land use planning guidelines. All the legislation says is that the minister must give notice. It doesn't say how notice is to be given, what it will constitute or anything else.

I would regard a difference between notice, which may be given on the environmental registry or whatever and is not a very proactive kind of notice — it's available to anybody who wants to avail themselves of it, but you have to be monitoring it. You have to check the Web site or look in the newspaper or whatever. I think that's a little different from the example we give in the Planning Act, where the Minister of Municipal Affairs is directed to consult proactively with every municipality in Ontario regarding a proposed policy statement. I think we're talking about wanting to see something more proactive, that municipalities can benchmark the government's actions against, that says, "The minister shall consult with the following." That doesn't mean that the minister has to agree with what they say, and we're not questioning the final authority of the minister to approve the plan.

**The Vice-Chair:** Thank you very much for your presentation. Your time has expired. We appreciate your presentation to the committee.

## UNION GAS

**The Vice-Chair:** I call on the next presenter, Union Gas.

**Mr Rick Birmingham:** My name is Rick Birmingham. I am the vice-president of regulatory affairs for Union Gas.

I want to begin by stating that Union supports the changes to the Ontario Energy Board Act, specifically section 19 of that act, which are incorporated in Bill 25.

Union Gas is in the business of storing, transmitting and distributing natural gas. Our distribution network is through northern Ontario, running roughly from Orillia in

the south, up through Timmins and west to Kenora. It encompasses eastern Ontario, including the towns of Belleville, Cornwall and Kingston, and also southwestern Ontario, running from Windsor to Oakville and north towards the Bruce Peninsula, to Owen Sound.

We also transport natural gas for a number of other participants in the energy market, primarily those who want to transport gas and/or sell it in other parts of Ontario, like Consumers' Gas, Quebec and the central and northeastern United States. In fact, most of the gas we transmit on our system is for those markets. The gas that travels across our system is greater than the gas we actually distribute in our areas. At some point most of the gas produced in Alberta travels across Union Gas's system. Union Gas also owns the largest natural gas storage facilities in Canada, and those are located near Sarnia. Union Gas is a wholly owned subsidiary of Westcoast Energy, a leading North American energy company.

Significant changes are going on in the energy market in Ontario. There are new, more sophisticated entrants coming into our market and beginning to offer the end-use consumer a variety of energy-related products and services.

There is also new competition for what we used to view as the utility's traditional business. In that respect, we see that our role is changing. And despite the fact that we have had a very high profile with the end-use gas customer in Ontario, we see ourselves becoming more of a wholesaler.

With that kind of backdrop, we know that we need to make some changes. One of those changes is that we have recently received approval from the Ontario Energy Board to transfer all of our merchandise-related programs to one of our unregulated affiliated companies, and that is going to create a significantly different role for us.

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Another part of that significant change, we believe, is some type of reform of the regulatory framework that governs gas utilities in Ontario. We think that's necessary because the current process can't meet the flexibility and time limits our customers are demanding of us.

Currently, our rates are set by the Ontario Energy Board under what's known as cost-of-service regulation. That means that every time we want to change our rates or the terms and conditions of those rates, we have to apply to the Ontario Energy Board and participate in a public hearing. Basically that type of regulation has been in place in Ontario for roughly the last 40 years.

The hearing process involves a detailed examination of the forecast for a given year. That forecast would include our revenues, our cost to operate and the capital spending on projects we anticipate putting in place. Then we take all those costs and revenues and allocate them to different groups of customers. Once we allocate all those costs, we design rates around them. As a customer, you can't possibly look at our forecast and know what that means to your rates.

Also the public hearing process typically lasts about a year from the time we file an application and send in evidence, go through the hearing process and ultimately



receive a decision and an order from the Ontario Energy Board. It also requires the provision of a lot of information that we wouldn't typically generate in order to run our business.

The process, on an incremental basis, can run over \$1 million annually and, if you include internal costs, can well exceed \$10 million, and that represents about 5% of our operating costs. So it's a significant amount for us.

If Ontario is serious about creating a competitive energy industry and becoming a type of magnet for energy transactions, then we don't think that's the appropriate regulatory process. We would prefer to direct our resources and our employees to serving customers better, and find a better way to achieve the objectives of regulation.

The government is going to pass some legislation this fall under Bill 35 to consider different ways of regulating utilities. That will include Ontario Hydro, some of the municipal electric utilities and gas utilities as well. The government has said in a number of instances that they are committed to a lighter-handed form of regulation, and we think that regulatory symmetry in that regard is important because of the competitive nature of the business. We think the time is right for change.

The type of change we're talking about is often referred to as performance-based regulation or PBR. It's used to describe a set of incentive-based tools that can be applied to determine rates, and really focuses on the outcome of the utility's activities rather than looking at the costs of those activities. You're focusing on the quality of the result rather than on the ingredients that go towards generating that result.

A properly designed PBR system rewards both customers and the company for improvements in productivity, service quality and innovation. More importantly, they are typically set for a longer period of time; for instance, three to five years. That allows customers to know the implications of the rates that are going to be charged to them. They'll know what the rates look like for a three- or five-year period, and that allows them to incorporate those into their financial planning cycles.

PBR also generally results in fewer reviews before the regulator. We think that will help the OEB in that they're going to be taking on the electric side of the business, and will relieve some of the regulatory burden associated with the gas side of the energy business.

In short, we think PBR and a different form of regulation can give the utility the same type of business model that most of its customers have; that is, a competitive approach to doing business.

In summary, we think alternative forms of regulation, including performance-based regulation, represent important tools that would allow our company to better compete in this rapidly changing market and better serve our customers. Union Gas certainly supports your efforts to amend section 19 of the Ontario Energy Board Act as expressed in Bill 25.

I'd like to thank you for offering us the opportunity to make comments to your committee and, time permitting, I'd be pleased to answer questions.

**The Vice-Chair:** Thank you. That gives us a couple of minutes per caucus. We'll start with the third party.

**Ms Martel:** Thank you for coming today. Can you tell me where performance-based regulation is used?

**Mr Birmingham:** Under the broad umbrella of performance-based regulation there is what's called incentive regulation. You can target certain costs, set a threshold for those costs, and to the extent that the company can beat those, the company is rewarded.

There are broader-based ones; for instance, a price cap where you simply set prices based on a formula. The former types, though, the targeted incentives, are being used primarily across Canada. BC Gas, in British Columbia, has one. Consumers Gas' currently has a proposal before the Ontario Energy Board. There are other examples through the US.

There have recently been examples of the broader-based form of performance regulation — that is, setting prices by formula — in Alberta and in several US jurisdictions. In fact, in the US we're starting to see the second generation of performance-based regulation. So it isn't really new ground that we're breaking, but it's certainly new ground in terms of being an Ontario approach.

**Ms Martel:** Is it in place in a number of states?

**Mr Birmingham:** Yes.

**Ms Martel:** You said we're seeing a second generation, so I'm assuming —

**Mr Birmingham:** A number of US jurisdictions made a type of performance-based regulation proposal, say, four years ago, and the term of those agreements was four years. So now they're making their second round of performance-based regulation proposals to their regulators.

**The Vice-Chair:** To the government now.

**Mrs Ross:** Following up on Ms Martel's questions, I'm still a little confused about performance-based regulation. What exactly does that mean to me as a consumer?

**Mr Birmingham:** I can give you an example. One type of performance-based regulation is known as a price cap. Let's say the rate we're charging you right now is \$100. What we might say is: "We have a number of things that cause the costs in our business to increase: inflation, investing in new systems, maintaining the plant and the utility, all the pipes and compressor stations that are used to deliver gas. All other things being equal, that might cause our rates to go up, say, 3%." Then we make a commitment to productivity, to more efficient operations. Let's say that's a reduction of 1%. So the way you'd set your rate is simply to say: "It's \$100 now. Next year I'm going to take your \$100 and increase it by 3% for the things that drive rates up. I'm going to make a commitment to productivity that would be 1%. We're going to increase your \$100 rate by 2% net. So now your rate is \$102. End of story, that's what we charge you."

That compares to the process now where we would file a forecast of all the different revenue streams we have from customers, all our different costs, all our different

capital projects, and then go through a very detailed examination through a public hearing process to set rates. It isn't possible, as an end-use consumer, to take a look at the evidence we file in the public hearing and determine what it means to your rate if our costs go up by 3%. This will directly link the utility's activities and the rates that are charged to customers in the eyes of the end-use consumer. It will also be a lot cheaper.

**Mrs Ross:** You say in your brief that it will result in fewer reviews before the OEB. Are you basing that comment on other jurisdictions such as the United States?

**Mr Birmingham:** Yes.

**The Vice-Chair:** To the opposition.

**Mr Mike Colle (Oakwood):** Mr Birmingham, you mentioned that significant changes are occurring in the energy market in Ontario. One change that the general public is very upset about is door-to-door solicitation by gas brokers that takes place, basically signing up people supposedly to a new contract for life with a new gas delivery agent, which may not even be an actual company but just a shell company. What is your company's position on these door-to-door gas broker scam artists?

**Mr Birmingham:** I guess our experience has been that most of them aren't disreputable. Most of them are legitimate companies that are buying gas in Alberta and want to resell it in Ontario to end-use customers.

We have also been very much concerned about the end-use consumer, and we have supported the government's efforts to license brokers and to require licensing to operate in Ontario. We understand that Bill 35 is going to give the Ontario Energy Board that authority, and we think that goes a long way toward making sure that a minimum standard of behaviour is met in Ontario.

The other thing we do is known as third-party verification. When a customer signs up with one of those brokers, we take the contract and send it to a third party and they actually contact the customer directly to verify that they have signed the contract, that they understand the terms of the contract, that they understand the date when that contract will come into place. If the customer agrees, then we process the contract and they now have an agent who can buy their gas for them. If they disagree, then the contract goes back to the broker and the contract is not executed until the broker has an opportunity to resolve the conflict.

**Mr Colle:** What if someone has unknowingly signed one of these contracts? I've had an ongoing case for two years; we finally have some success, no thanks to the government. Could you basically disallow that contract, and what role do you play in that? For instance, they've signed up with one of these brokers and the broker they signed up with sold their contract to someone else who then sold it to someone else. Does your company have any role in saying, "Listen, we will not recognize that contract"?

**Mr Birmingham:** After the contract has been verified, if there is some sort of commercial arrangement made between brokers to assign the contract note, we aren't involved in that transaction.

**The Vice-Chair:** Thank you very much for your presentation.

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ANNE DEMETER  
CHARLES FARRAUTO

**The Vice-Chair:** I call the next presenter, Anne Demeter. Anne, you have 15 minutes to use as you see fit.

**Ms Anne Demeter:** Mr Chairman and members, I'm Anne Demeter, from Sarnia, Ontario. I'll skip the introduction because I have a copy for each of you.

I refer to the throne speech, April 23, 1998, and I speak of the social services or lack thereof, and this is ironic because ministers Tsubouchi and Ecker have been the most generous with their time and assistance. However, a minister is only one against the many deputy ministers, most of whom are overpaid and overrated. Remember, it is the Tom Longs and company who are running this province.

In the throne speech, an 18-year-old youth from St. Catharines, Daryl Whitehead, had written to find out whether there would be a good job for him when he finished school. The reply, which got the longest and most thunderous applause, was a pledge from the government to fulfil his every dream.

This hypocrisy compelled me to write the Lieutenant Governor to tell her about another 18-year-old from St. Catharines. Unlike Daryl, he is disabled with a heart condition — five open-heart surgeries since he was two months old. Despite this he is working on his last year of high school. Jack Carroll, parliamentary assistant to minister Ecker, promised him and everyone else that those who had been assessed and were receiving assistance as children would automatically be put on adult status. I taped Carroll. This boy's name is Matthew Demeter. He's my grandson. However, his 18th birthday present from the government was to be thrown to the wolves and denied any further assistance.

Now I ask each of you to ask Carroll, in the House or out, why he misled staff by telling them that we had appeared before something he called the social assistance tribunal. Where are they located, and when did we appear before them? It's totally untrue. I give you permission to use any of the enclosed information and do it for Matt and all the others.

There is just one short piece here. I refer you to Hansard, August 29, 1997. Frances Lankin, speaking on Bill 149, decimates the ruling that one director has the power to say who will or will not be helped. She goes on to speak about Carroll and his sharp ways of using half-quotes which distort the truth, and she called it unfair debating.

The next three years are crucial for Matthew. His talents lie in the cerebral, but he needs the polishing up that university can give him. At 18, everything costs more: shoes, clothes, transportation, tickets to a concert. I want him to receive retroactively the money he should have had



since March 1997, so he can become a contributing member of society. Do it for the kids. Thank you.

**The Vice-Chair:** Is that your presentation in its entirety? We'll split the time up, then, with approximately five minutes to a side and we'll start with the government side. Any questions from the government side?

**Ms Demeter:** Were there any questions?

OK, my friend Mr Farrauto is going to carry on.

**The Vice-Chair:** Any questions from the government side? Mr Boushy?

**Mr Dave Boushy (Sarnia):** Being from Sarnia, I just want to welcome you to the committee —

**Ms Martel:** The submission's not finished.

**The Vice-Chair:** The submission is not completed. I'm sorry.

**Mr Charles Farrauto:** Anne Demeter wanted me to contribute to her submission to this committee. My name is Charles Farrauto. I am president of Kids Need Both Parents in Hamilton.

When I entered family matters in 1990, I was earning in excess of \$100,000 per year consistently. I bought and sold goods and services of all kinds, paid lots of taxes and was a very proud Canadian. I no longer earn any income. I pay no taxes and I've lost all incentive and motivation to do so, due to the system now in place for dealing with family breakdown.

In 1994, I was charged with and prosecuted for sexually abusing my daughter in the midst of a heated and ongoing custody-and-access matter. I've been cleared of any wrongdoing in that matter.

Today, four years later, I remain embroiled at both the Attorney General's office and the community and social services ministry to have them openly address their part in the affair.

To date, submissions made to the Attorney General, to the panel of experts on child abuse and to the joint Senate-House committee on custody and access appear to have fallen on deaf ears at all levels.

I also have a complaint at the Law Society of Upper Canada, three years running now, regarding one of their members who, while dating my daughter's mother, played a major role in the false allegation of sexual abuse against me. Their unwillingness to even consider that one of their members could have done wrong is evident in all their attention given to the matter at every step of the complaint process, from the bottom up and from the top down, even with hard evidence to the contrary. The message is simple: I am expected to just go away.

For the tax-paying citizens of Ontario, the message is also clear: If you want to bend the ear of your elected official, the only thing that might work at getting their attention is to file a law suit.

Few citizens have the resources or the tenacity to get their money's worth from their government, and that is common knowledge. Canadians are a tolerant people. It's their reputation that they are tolerant. For you to know of these issues and do nothing is indeed a breach of the public's trust, and if one has to go to court over these

issues from a disadvantaged position, it is malicious prosecution.

I do have that. I have the tenacity and the determination for societal and personal reasons.

Why is it that in a free and democratic society, the only way the government will address legitimate issues is at the threat of a law suit? I bring to your attention the Dionne quintuplets.

Why any citizen should have to resort to such measures in a free and democratic society to receive what are their rights before the Constitution and everything this country stands for, defies all good sense and is an insult.

With all the studies to show that false allegations occur, and in fact are rampant in family courts — see the Civil Justice Review, March 1995 — how could ignoring that expensive information be anything less than bad faith and malicious prosecution when a family is brought before a court to determine the fate of their children?

As a justice committee it is your obligation to locate the Civil Justice Review, dust it off, and look at the section on family law and family matters before you make any decision on your work here. To do anything less would indeed show bad faith.

I make this comment directly for the Attorney General. He has not wasted one bit of correspondence with me over the entire time he has been in office, despite numerous attempts by me and others to address the failure of his ministry to answer for the problems in family courts. All that his underlings have provided me with to date is nothing more than: "Sorry about your luck, son. Try knocking on someone else's door."

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An argument against there being any problems in family matters is that only a small percentage of families end up in courts and most are resolved between the parties. If that is so, then how would this government account for the billions of dollars spent each year on the administration of justice regarding family matters? Add to that the cost to a family, both financially and emotionally, when they are forced to duke it out in the courtrooms.

No attention by any government, to my knowledge, has taken into account the diminished state of a parent, once these parents, both mothers and fathers, are embroiled in a gut-wrenching custody-and-access matter; nor is the quality of life they provide for their children when making policy decisions.

My child has been put through multiple investigations over her alleged abuse, and no one has yet taken accountability for that abuse, which is ongoing. She is failing in her work at school. Her mother is planning a life in West Virginia with her latest Internet beau; this one, after those in New York, England, Australia and God knows where else, this after four failed marriages, no less than two abortions and her lawyer lover who is now before the law society. My daughter has been left in a number of compromising situations. The children's aid society is aware of this and many other legitimate concerns and, to this date, they have no concern whatever for her welfare.

Not one of the participants involved in trying to help my family can find anything amiss. The best the CAS could do is throw gasoline on a smouldering fire, not once or twice but three times now, and then bury their heads in bureaucratic sand. No one is willing to take responsibility for how my child is being treated and, despite my efforts, eventually the stakeholders who have a financial interest in my child's best interests are going to tell me that it's my fault that my daughter is in this predicament.

For these participants to even consider the possibility that any of them could be wrong or that they are not working at a high enough degree of performance is in itself a breach of trust. And if they could admit wrong, we are faced with the fact that negligence to the point of death is OK as long as there is no bad faith — see the coroners' reports on child deaths where the CAS is involved.

If my family matter were an isolated incident, I might adopt the attitude that many have, including government, that bad things sometimes happen to good people. I cannot accept this. These types of circumstances and the government's response to these issues, some as bad and some worse, have been playing themselves out thousands of times each year from what I have seen at Kids Need Both Parents over the seven years I have been involved with the organization. There's no shortage of horror stories.

My submissions to you today are:

- (1) To consider that what I say has merit.
- (2) To do nothing is a breach of the public's trust.
- (3) That the money spent on social services would be greatly reduced if the citizens of Ontario were not brutalized in the courts.
- (4) That those embroiled in family matters be treated with compassion and in need of healing, not thrust into an adversarial court system that few are able to tolerate, save for judges, lawyers and their administration.
- (5) That mediation is the way to resolve family matters, that that process will diminish the parents least and will show how much each parent is willing to compromise their personal positions to provide for their children. No one will be forced to do anything without a good try at settling their matters, and compliance with those terms is most likely.
- (6) That the great time and expense conducting the Civil Justice Review not be wasted, and be referred to especially on family matters when considering any actions for a remedy on these matters.
- (7) That for the government to allow matters to remain as they are and do effectively nothing for these families is a breach of trust, and when you consider the diminished parent that results, child abuse and self-serving.

(8) That there is a possibility that the present system of dealing with family matters is wrong and that there is a better way, and to consider that for every letter written and for every concern raised in these matters, there are thousands of others.

(9) That to leave grandparents and extended family out to dry while their loved ones are embroiled in a custody-and-access matter is abusive and a waste of a valuable resource to help settle a family dispute; and

(10) That to consider a joint parenting model over a sole custodian/access parent model is not working and that compliance with any terms of a joint parenting arrangement are more likely to take place with less government involvement necessary.

**The Vice-Chair:** Thank you very much.

**Mr Farrauto:** If I can add one item. Is there a minute?

**The Vice-Chair:** Yes, you have a couple of minutes.

**Mr Farrauto:** I have something here from the Civil Justice Review. I'm sure all of you are familiar with it, and if not, it's easily obtainable. I've got something from Charles Harnick when he took office. It's the cover letter of the first newsletter that came out from the Civil Justice Review. He says:

"I believe that in the light of the challenges currently facing the administration of the courts in Ontario, the collaboration and cooperation among the bench, the Ministry of the Attorney General, the bar and the public, enabled our committee to develop a viable plan and one that is capable of taking our courts into the next century. I am confident that its recommendations outline a model for a faster, fairer and more efficient civil justice system for the province.

"My message today is that the government will not set aside this report while more challenging and long-term goals are being developed."

I've been following these issues very closely and I've heard nothing come out of the Civil Justice Review, and Debra Paulseth, who was taking care of any concerns out of the Civil Justice Review, has never returned one of my phone calls.

**The Vice-Chair:** You have exhausted the 15 minutes allocated to you. Thank you for your presentation.

I would like to remind the committee that the deadline for amendments to the committee is Wednesday at 5 pm. That concludes the business here, and this committee stands adjourned until October 26 at 3:30 for clause-by-clause.

*The committee adjourned at 1747.*



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# Official Report of Debates (Hansard)

Monday 26 October 1998

# Journal des débats (Hansard)

Lundi 26 octobre 1998

**Standing committee on  
administration of justice**

Red Tape Reduction Act, 1998

**Comité permanent de  
l'administration de la justice**

Loi de 1998 visant à réduire  
les formalités administratives



Chair: Jerry J. Ouellette  
Clerk: Douglas Arnott

Président : Jerry J. Ouellette  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Monday 26 October 1998

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Lundi 26 octobre 1998

*The committee met at 1533 in room 228.*

## RED TAPE REDUCTION ACT, 1998

LOI DE 1998 VISANT À RÉDUIRE  
LES FORMALITÉS ADMINISTRATIVES

Consideration of Bill 25, An Act to reduce red tape by amending or repealing certain Acts and by enacting two new Acts / Projet de loi 25, Loi visant à réduire les formalités administratives en modifiant ou abrogeant certaines lois et en édictant deux nouvelles lois.

**The Chair (Mr Jerry Ouellette):** I call this committee to order to commence clause-by-clause consideration of Bill 25. As Chair, I'm required to ask the question: Are there any comments, questions or amendments to any section of the bill and, if so, to which sections?

The package that has been presented from each of the caucuses, I would assume, contains the amendments.

On section 1, amendments to be moved by Mr Kormos.

**Mr Peter Kormos (Welland-Thorold):** Are you speaking of amendment number 1 that's contained in the package?

**The Chair:** Yes. For further reference, the top right corner of the package distributed today will be dealt with 1 through 14, and we'll be dealing with amendment 1 on section 1.

**Mr Kormos:** It doesn't refer — oops, as a matter of fact, it is in order, it's very much in order, because rather than referring to a schedule, it refers to the initial part of the bill. So I move that subsection 1(2) of the bill be struck out.

**The Chair:** Discussion?

**Mr Kormos:** That relates to further amendments and further consideration. This was raised during the course of hearing submissions; in my view and in the view of other people who have read it, a particularly dangerous piece of legislation. That is schedule C, the Statute and Regulation Revision Act, which establishes what has been happening on a 10-year basis in this Legislature, and that is, that in the ninth year of every decade there's a bill before the Legislature which effectively creates what all of us call the RSOs, the Revised Statutes of Ontario.

Frankly, and I indicated this when I spoke to this previously about schedule C, it really does little more than what that 10th yearly bill does, except that it establishes that it will never again appear before the Legislature. In

that respect, I suppose I'm grateful. I'm not real grateful about Bill 25 and I don't see how schedule C is in any way a reduction of red tape.

What happens is that ministries, throughout the course of a decade, gather pieces of legislation which have become redundant or obsolete, not in current usage, and I assume, although I'm not as aware of this as I am of simply dealing with redundant or obsolete legislation, they correct, let's say, grammatical errors.

The scary language in schedule C, which gives — and listen, Chair, I want to tell you that in the modest 10 years that I've been here, I have acquired nothing but the highest regard for legislative counsel. Please, I want to make that absolutely clear. Unfortunately my regard for legislative counsel, absolute as it is, does not stand in the way of my opposing schedule C. It relinquishes legislative authority to the civil service.

Again with the highest regard for legislative counsel, and recognizing that this has been done every 10 years in any event, when the bill is presented before the House in the ninth year of every decade, there's an opportunity to debate it. There obviously then would be an opportunity to direct comments to what had occurred 10 years earlier or what had transpired during the course of the last 10 years about the appropriateness, or whether or not legislative counsel, in creating the RSOs and engaging in these revisions, had lived up to the mandate of the legislation.

There are the deeming sections in schedule C. If you take a look at it, folks, if you take a look at subsection 3(3), for instance, of schedule C, once an RSO is published, as amended by legislative counsel, may I dare say it, without debate, without legislative oversight, it's deemed to have been passed by the Legislature.

There appears to be literally no recourse to what legislative counsel, as an office, not as individuals or personalities — there's no recourse. In other words, you can't refer to the bill — please, this is incredibly important stuff — you can't challenge effectively rewritten legislation. That's a pretty bold statement, to suggest that legislative counsel rewrite, because historically I'm confident they haven't. But let's understand that the bill gives them the authority to effectively rewrite legislation so that the legislation reflects what is considered to be the intention of the Legislature. That's a pretty heady sort of thing.

How do you determine the intention of the Legislature? Do you refer to the debate that took place during the course of the legislation? If you do, whose contribution to



the debate do you refer to? Do you refer to the minister's announcement, his or her introduction to the legislation, which is designed to provide some sort of framework? Do you refer to the criticism of opposition members who say that the legislation is going to do the very contrary to what the minister said it will do?

1540

For your benefit, I'm referring to clause 2(1)(c) of schedule C. Take a look at it. Legislative counsel is entitled to change, to literally rewrite legislation. Whether they've done it in the past, and I'm confident they haven't, is not the issue. The fact is this gives them the authority to literally rewrite legislation behind closed doors, in secret, without any public consultation and without even the gazetting of it — do you hear what I'm saying? — without even the publication of what legislative counsel, as civil servants, as bureaucrats, have done. And because of subsection 3(3), there is no recourse.

In other words, a party to a proceeding who disputes that legislative counsel has abided by clause 2(1)(c), who says, "No, no, legislative counsel did not rewrite the legislation; they rewrote it but they didn't rewrite the legislation to express the intention of the Legislature," there's no recourse. You can't argue. What would the argument be? You can't argue that they were — what would you say? I presume there are lawyers in here. There's a whole lot of bureaucrats and civil servants and little mandarins, both political and non-political, and some of them are well paid and some of them are not so well paid. All of them work hard, I'm confident of that. But nobody is in a position to use the courts to say that legislative counsel exceeded their mandate because of the deeming section in 3(3).

The parliamentary assistant will recall this having been raised earlier. This is really some pretty unprecedented stuff in what we call a democratic society. It's really unprecedented. You've got the power to rewrite legislation without any public consultation, without any oversight, because of course legislative counsel is independent. The Attorney General can't tell legislative counsel what to do. A wink and a nod, and the risk of politicization of the civil service — and again I'm not suggesting that's the case, but it can happen and it quite frankly has happened at various points in this province's history, in this country's history and in the history of other elected parliaments or governing bodies, the politicization of the civil service.

Quite frankly, we see it now. We see civil servants — and you don't have to tell them. Civil servants and bureaucrats aren't dummies. You don't have to tell them what the political goals of the government are. They understand. Many civil servants have been very unwilling. I know this. I've talked to them. Sure, they've written the legislation that's been demanded of them but they aren't happy about it. They're not confident that it's good for the province but they understand that this government has a particular direction politically and they, as civil servants, are obliged to pursue that direction. This is very dangerous.

I would love to hear from the parliamentary assistant, or anybody, to share with us other jurisdictions which

claim to be democracies as well which have similar powers.

I know the contra-argument is that it's being done every 10 years, but at least the bill has gone before the Legislature so that it can be the subject matter of debate. Do you understand what I'm saying, Ms Ross? At least every 10 years you've got a chance. If there has been an egregious and totally inappropriate revision to a piece of legislation, members of the Legislature, regardless of who's in power, have the chance to stand up and say, "Hey, before we pass this bill, let me direct your attention to what legislative counsel did to subsection 5(4) of this particular bill." You've got a forum in which to dispute it.

You've got the incredible power, you've got the deeming section under section 3(3), you've got the entire absence of any public exposure during the course of this, any public consultation, and even, as I say, the gazetting. If, for instance, schedule C had a provision that proposed changes be gazetted, that would give interested parties an opportunity to say, "Hells bells, you're wrong about your revision reflecting the true intention of the Legislature." At least you would have that modest opportunity to intervene and maybe have legislative counsel — and again, I speak of them as an office, not as individuals or personalities. A member of the Legislature, a member of the public, a member of the bar, anybody could have a chance to at least force legislative counsel to rethink it and maybe consider, "Oh, gosh, maybe we were wrong, maybe we didn't fulfil our mandate under 2(1)(c)." I'm telling you, friends, this is very scary stuff.

I appreciate that another argument would be that it's a matter of convenience. Why should this be brought before the Legislature every 10 years? In that respect, I suppose it could arguably be the elimination of red tape. Well, Lord love a duck, have we reached that point where the democratic process is to be regarded merely as red tape? Why don't we dispense with it all? Democracy is not necessarily speedy. Some of us have had an opportunity to demonstrate that over the course of our parliamentary careers. It's not necessarily a speedy exercise and it's not necessarily an inexpensive exercise. I understand that. But I'm extremely frightened by the potential that's contained in schedule C.

Once again, I want to emphasize I have the greatest respect for the legislative counsel, as I have known that office over the course of a decade, but this, my friends, is scary stuff. It is an affront to what I'm confident every Ontarian thinks democracy is, regardless of what part of the province they live in, regardless of which newspapers they read or if they read them at all. This runs so contrary to some very fundamental tenets.

I'm saying this with great sincerity. I hope you understand when I say to the members of the government caucus here that I've not been partisan at all in this commentary. I'm suggesting that any subsequent government has the power to exercise its influence over the civil service in any number of ways, however subtly, however surreptitiously, such that the powers in this legislation could be seriously abused. That's number one.

Even without that consideration, you don't relinquish legislative writing powers to the civil service. However incompetent all 130 members of the Legislature may or may not be at given points in time, the fact is that you're elected to develop policy — I know it becomes increasingly difficult as government becomes increasingly centralized and where the sources of policy are increasingly external to government; I've witnessed that over the course of the three governments that I've been involved with here — and you don't relinquish that responsibility.

I reject the argument that this merely codifies what was being done every 10 years in any event. At least that came before the Legislature and, if there were issues to be debated, it could be debated.

I am telling the members of this committee they've got an obligation and a responsibility. This is one of two or three very important things that I want to address in Bill 25. I appreciate that I've been — I'm going to shut down in a couple of moments.

1550

We have — and when I say "we," do the opposition parties have any power in this committee? None. Zero. All we can do is speak out and raise issues as we see them. Are the issues we raise sometimes very partisan? Of course they are. When I speak to this, though, am I being partisan? I tell you, I am not. I don't think there's a single word that I've said that could be interpreted by any fair-minded or thinking person as being in any way, shape or form partisan.

I say this committee has a great deal of power. Rarely do committees exercise that power, because committees are whipped. I've been on the other side — now, mind you, I was hard to be whipped and it made me unwelcome at —

*Interjection.*

**Mr Kormos:** Well, it did, to the point where the last government wouldn't appoint me to any committees because they couldn't be assured that I would necessarily vote as I was whipped. Because I did it; I did what I thought was right. Parliament is a circus in there. You folks know it. It's televised; it's show time. If there's any real role —

*Interjection.*

**Mr Kormos:** Well, it is. I know it is. If you don't utilize it, you're a damn fool as a member of the Legislature, and any one of you has, when given the opportunity. But the place where you can really have some impact is here in committee, because what you can do here is, having listened to submissions — and we've heard submissions on this bill; not on this specific point, but I raised it at the very onset of these hearings and I speak very, very emphatically to it today.

You people, my colleagues who are members of the government caucus on this committee, can send this one back to the drawing board. You'll still pass Bill 25 — I have no hesitation in saying that; I understand that — but you can say no to schedule C. You can have conducted

yourselves in a very non-partisan way and have the supervision of this bill.

I understand it's in the name of the Minister of Consumer and Commercial Relations. Poor Ms Ross is here as the PA, and far be it from anybody to expect her to — it covers such a wide range of things that it doesn't just cover Ministry of Consumer and Commercial Relations. Perhaps ideally the AG's ministry would be best represented in addressing schedule C.

If the government wants to reintroduce this bill — it is in fact a whole bill, schedule C — let them do it. Let them do it next month, but don't let them do it without you having expressed your concern about the onerous powers that are being relinquished, the abdication of legislative responsibility that's inherent in approving schedule C.

I should indicate that I'll be supporting my amendment which would effectively prohibit the enactment of schedule C, because what 1(2) does is say that schedule C is enacted. So my amendment will kill schedule C. That doesn't prevent the government from reintroducing schedule C as an independent bill. It doesn't preclude it from doing that. I'm asking you — and again, if there's contra-arguments, please tell me. If I've been wrong in my analysis, please tell me.

I've read this schedule very, very carefully. I've read it as a member of this Legislature. I've also read it — and I don't throw this around very often because, heck, I guess lawyers aren't the most popular thing in the world — but I've read it as somebody who's been a lawyer for a good number of years before I came here. So I've read it from both perspectives, and I've also read it as somebody who, as a member of the community, would be shocked to understand that this legislation exists, who would be shocked to think that the Parliament doesn't have the final say in what a piece of legislation reads and that this goes far beyond merely telling legislative counsel they can correct grammatical errors, you know, if it says "a" instead of "an." That wouldn't bother me. This goes far beyond that. Very scary stuff, my friends.

I'm not suggesting anybody has been less than forthright and that the motives might have been good in the first instance — but very, very scary stuff. I'm not imputing motive; I'm not. I'm simply saying that's the net effect of this. It doesn't belong in a democratic, parliamentary system. Thank you, Chair, for your patience.

**Mr Bruce Crozier (Essex South):** I just want to support the comments of my colleague from Welland-Thorold. I ask that we all consider seriously what he said. If you just simply refer to section 1 of schedule C, it says:

"The chief legislative counsel for the Province of Ontario may prepare,

(a) a revision of any or all of the statutes of Ontario; and

(b) a revision of any or all of the regulations of Ontario."

My colleague has given you the reasons why we should be concerned about that and the rest of schedule C.

I don't know whether anyone, either in the area of the chief legislative counsel or in the area of government,



consciously said, "We want to give this kind of authority to the chief legislative counsel" — I don't know — or whether it just happened to have been drafted as an effort to reduce red tape, as has been mentioned. But I think what we have to keep in mind is the word "accountability." In the end the accountability should always be with the Legislature and should not be with any unelected body or part of the government.

Therefore, I ask that you consider what has been suggested and at the very least that we vote down this subsection 1(2) of the bill and that it be reconsidered in view of what the real objective was with this section, and hopefully that it would be revised to meet those objectives and brought back at a later date if so necessary.

**Mrs Lillian Ross (Hamilton West):** Mr Kormos raised the issue that by voting for this, in effect it eliminates schedule C. Statutes are revised, you're right, every 10 to 15 years. Legislative counsel have been doing this for over 100 years, so they have some good background behind it.

A lot of the changes that they bring forward, he's quite right, are grammatical errors. They change the numbering. An instance is the Municipal Act: 500 provisions have been changed in the Municipal Act since 1990. If someone wants to go through that, they have to go through 12 separate printed volumes, many of which contain several different amending statutes, so it's a huge process to go through it to try to understand a single piece of legislation.

This will allow legislative counsel to go through it on a regular basis so that they don't have to wait 10 years, number one. It allows the public or whoever wants to access this information faster and more accurate access to official revisions of legislation that has been revised. Even after all that, it still has to be reviewed by the Lieutenant Governor in Council.

As a member of the bar, I would think that Mr Kormos would agree that you have to put a certain amount of faith and trust in legislative council to do the job that they've been hired to do. I think it's the objective here that we would like to vote against this motion.

**Mr Kormos:** Very briefly, because I have no more time, the government caucus has just been whipped. Please, I understand what you're saying about renumbering. I acknowledged that. "Make changes...to clarify what is considered to be...the intention of the Legislature." That goes far beyond renumbering, it goes far beyond correcting grammatical errors. It remains a very dangerous piece of legislation, Mrs Ross.

**Mrs Ross:** If I could just make one more comment, the powers that are in here are no greater than what they currently have. They currently have the ability to do that. All it's saying is they can do it on an ongoing basis, they don't have to wait for 10 years to do it. That's what this legislation is doing.

1600

**The Chair:** Further discussion? Seeing none —

**Mr Kormos:** Recorded vote, please, Chair.

**The Chair:** A recorded vote. This shall be deferred until all remaining questions have been put. The vote comes not right now; it comes a little later.

**Mr Kormos:** I'm sorry, I thought we were going to vote on the amendment, my motion to amend. My apologies.

**The Chair:** Section 2: Any comments, questions or amendments on section 2?

**Mr Kormos:** Briefly, obviously I'm opposed to section 2 because the enactment of this bill would then enact, among other things, schedule C, as well as schedule J, which is another very frightening piece of legislation which I'm not confident everybody understands the impact of. Unfortunately, that puts me in a position of having to be opposed to section 2 as well, which effectively enables the enactment of the whole bill, Bill 25.

**The Chair:** Further discussion on section 2? Seeing none, all those in favour of section 2?

**Mr Kormos:** Recorded vote, please.

**The Chair:** It will be deferred.

**Mr Kormos:** Chair, on a point of order, if I may: Can we assume that everything is going to be deferred, so we don't have to go through the formalities?

**The Chair:** With a recorded vote, it is deferred to —

**Mr Kormos:** OK, thank you.

**The Chair:** Discussion on section 3?

**Mr Kormos:** I understand the PR exercise of this so-called red tape stuff. Quite frankly, there have been a couple of bills that purport to be part of the elimination of red tape that have been passed by the Legislature without much ado. This isn't the case with all of this. I'm speaking to the matter of the title, Red Tape Reduction Act. That's what section 3 is all about, isn't it? Let's understand what happened.

What is it when something happens every 10 years? Help me — something that happens every 10 years; not the annual, not the biannual.

**Mr Michael Wood:** Decennial.

**Mr Kormos:** Thank you kindly, legislative counsel. The decennial phenomenon of reviewing the existing statutes that we've talked about in terms of schedule C. What happens is that all ministries, if they have the time, if they've been able to do it, prepare on an annual basis legislation that is going to be presented to legislative counsel. Legislative counsel doesn't sit down and read every statute in the RSOs, for Pete's sake. There's a whole pile of legislative counsel here, but they're far too busy to do that. They don't sit down and read them all and say, "Oh, we'd better check court records and see whether this obscure piece of legislation has been used for a long time." Various ministries prepare a list of stuff that's to be reconsidered by legislative counsel, and that happens in the normal course of ministries.

So to suggest that somehow a group of people on what's called a Red Tape Commission — I remember, oh boy, a fanfare — sat down and read all of the statutes of the province of Ontario is hokey. I know better than that. I know all of the people on that commission. They did not read all of the statutes of Ontario —

*Interjection.*

**Mr Kormos:** — and you know it too. You know darn well they didn't. They solicited proposals from ministries as to any number of statutes, one, which could be repealed. To repeal it simply means that you decrease the size of the volume of the RSOs, because if a statute isn't being used, nobody pays attention to it anyway. So you're not eliminating red tape by repealing a statute that's defunct. You're simply making the volume of the RSOs thinner and, I suppose, a little cheaper to publish, although you wouldn't know it in view of what the Ontario government charges. Do you know what it costs to buy a set of RSOs? Zonkers, it's expensive. You wouldn't know that repealing reduces it, because it certainly hasn't reduced the price. That's number one.

Number two, ministries, through the course of their daily operation, have encountered difficulties as a result of litigation, perhaps prosecutions under a particular statute that have failed because some JP or some judge noted a shortcoming in the drafting. Then the ministry goes nuts: "We better cure that or else we'll never be able to prosecute again."

They also get input from their people out in the field. I have no hesitation in saying that. Some of the amendments in various schedules that we're going to talk to, I suggest, are the result of that.

Now the interesting part is that where they've been lobbied, where there are clearly interests that have been able to lobby the government to effect certain changes contained here, it doesn't result in an elimination of red tape, it adds to the red tape.

Take a look at, for instance, the amendments here which deal with the conservation act. Remember the submissions made about that by two parties who appeared before this committee? They weren't talking about this bill eliminating red tape. They were critical of the government, saying, "You guys are making things even harder for us, particularly farmers, agricultural people here in this province." At least one of my colleagues here will recall as well that it was reinforced at a recent Niagara South Federation of Agriculture annual general meeting and dinner just the other night, when specifically the conservation act amendments were highlighted as a report to that group of farmers down in Niagara.

Red tape reduction? Baloney. If we eliminate statutes that are not in use, that doesn't constitute red tape reduction, because those statutes aren't being used anyway. It amends certain statutes to create more onerous provisions and bigger hurdles for some of the people being impacted. That's not the elimination of red tape, that's the creation of red tape.

The other thing that it does is it relieves respective ministries of the requirement that they go through the regulation-making power. Please, Mrs Ross, I mentioned this before, sitting on the regs committee — is that the name of the regulations committee? The committee that reviews regulations.

**The Chair:** The Red Tape Commission?

**Mr Kormos:** No, the committee that reviews regulations.

**Mr Michael Wood:** The legislation and regulations committee.

**Mr Kormos:** Thank you, sir. The legislation and regulations committee. People are put on that committee as punishment.

*Laughter.*

**Mr Kormos:** They are. That's how I ended up on the committee. Rae was ticked off thoroughly and he had the House leader put me on the legislation and regs committee. Yes, it was punishment. I didn't atone. I mean, it wasn't enough. I don't think there could have been enough. I didn't feel sorry for anything I'd done, just because I was made to sit on the regs committee. But at least on the regs committee all three caucuses are represented so that a regulation undergoes — what would you call it? — some oversight by elected officials, and it's public.

Most of the time the regs just go through because, first of all, they're very boring, they're very tedious, they're fragmented so you really can't put them in context, but from time to time — I don't know if any of you folks have sat on the legislation and regulations committee —

**Mrs Ross:** We haven't been punished yet.

1610

**Mr Kormos:** Somebody in your caucus is, because they've got to have Tories there. Right?

**Mrs Ross:** It's true.

**Mr Kormos:** But from time to time, members of that committee will spot a regulation that has something that, for instance, runs contrary to public policy as they think it should be, and it will be halted, it will be interrupted there. Although it's a tedious process — if you think it's tedious sitting on the committee, think about the poor people who have to write these darned things. They've got to sit down and write these regs, never mind just read them and pass them in committee. There is some, dare I say it, political oversight in the course of the legislation and reg committee.

This bill eliminates much of — I suppose it's red tape again; it's democracy. It's just like schedule C. Democracy is oh so bothersome to have, it seems, because if you don't have these things going through a reg committee, what it does is — you know what I'm talking about, Mrs Ross — it gives fiat power to the minister to simply do it — bingo, bang, done — and it doesn't have to be done by regulation. We've seen it in the Ministry of Community and Social Services, and it was the subject matter of a lot of debate and a lot of criticism when we were talking about the new workfare bill that came into law — what? — in the spring of this year.

What happens is, again, no gazetting. Right? The rules could be changing perpetually. Now, far be it from me to express any mistrust in this government. I'm loathe to do that here, because I've done it often enough and vociferously enough outside of this committee.

But, parliamentary assistant, it's very dangerous stuff, once again. You may call it eliminating red tape; I call it



eliminating democracy. I'm not trying to engage in hyperbole when I say that, because at the end of the day the government can pass any reg it wants anyway, especially a majority government. The next government may not have that luxury of being a majority government, if indeed it's a luxury, but a majority government — boom — can pass it, and with regulations, since they only go through committee, where the government has a majority, it's not a matter even, let's say in a minority government, of it being the subject matter of debate and risking defeat in the House, in the chamber. If the committee passes it, it then goes to the Lieutenant Governor in Council, which means cabinet.

None of you folks have sat in cabinet. I've been in cabinet rooms — not for a long time, but long enough to understand how that works as well. You know as well as I do that the politics of the cabinet room are such that you don't become obstructionist in cabinet; if you do, you find yourself out of cabinet and sitting on the regulation committee. When I speak to schedule J, the repeal of the P&P act, we're going to talk about this more.

Listen, this bill, where it purports to eliminate red tape, really all it does is isolate power increasingly in the minister, which means in the Premier's office. You've seen what happens when ministers have said things out of turn. Far be it from me, but the Treasurer last week made a commitment about capping commercial taxes to the tune of 10% in the first year and 5% in each subsequent year, and I suspect that some bureaucrats said: "What the hell is he saying? We haven't even come close to considering the kind of legislation that would effect that result." All of a sudden you've got some scurrying going on in one ministry, saying, "Holy zonkers, the minister made a very political" — it's not inappropriate politically — "response to some pressure in scrumming," and all Hades has broken loose.

So, Ms Parliamentary Assistant, this is frightening, and it has nothing to do with the elimination of red tape. It is the increasing trend to abandon regulation-making power, which is subject to the leg and regs committee and subject to gazetting. It has been done before, but it really is prominent in this bill. It's simply making it an administrative act by a minister, which means effectively by the Premier's office at the end of the day.

I refuse to support a section that calls this the Red Tape Reduction Act. I'm going to vote against it, and I'm going to be asking for a recorded vote, which means that it will be deferred.

**The Chair:** Further discussion? You've already called for a recorded vote, which will be deferred.

**Mr Kormos:** Yes, thank you.

**The Chair:** Shall schedule A carry? Discussion?

**Mr Kormos:** Let's be cautious here. The repeal of the Sheep and Wool Marketing Act, I read the act. I went and looked at the Sheep and Wool Marketing Act because, I confess, I hadn't read it before. Have you folks read the Sheep and Wool Marketing Act? The act itself is not an offensive piece of legislation. As I recall it — you can't speak out from the audience, but if I'm wrong in my

recollection, blink twice — it had to do with charging tariffs in the course of the sale of sheep to fund the sheep and wool marketing body or board, what have you. In itself, it wasn't an offensive proposition, but obviously it hadn't been in use, and there simply isn't that kind of board that utilizes that kind of money or at least raises it that way. Good. Do I object to repealing the Sheep and Wool Marketing Act? No, and again I hope I'm not wrong, because I was reminded of this when I was down at the Niagara South Federation of Agriculture AGM, when once again they had concerns about two particular issues in this legislation; one of them was the amendments to the Drainage Act, and you can correct me if I'm wrong about that. I recall their submission to the committee, and also I was reminded of it, most fortunately.

It's because of those provisions dealing with the amendments to the Drainage Act and the failure of the government, Ms Parliamentary Assistant, to respond — I mean, the government simply hasn't responded by way of amendment. I can't find any to schedule A that would address those concerns, particularly of farmers. On this one, I'm with the farmers. I'm going to be voting against schedule A, and I will be asking for a recorded vote in that regard too.

**The Chair:** Further discussion? Seeing none, and as a recorded vote has been requested, it shall be deferred.

Discussion on schedule B?

**Mr Kormos:** I've got to tell you, I have little quarrel with schedule B. I may well be subject to criticism down the road for not having been more astute in finding something hidden away here, but the matter dealing with the Trustee Act obviously was applauded by people involved in it. I've got to tell you, I'm a little bit frightened by — what would you call it? — liberalizing or expanding the powers of investment for trustees. If it means mutual funds, however balanced, there would be a whole lot of beneficiaries of trusts who would be shy a few bucks over the course of the last month and a half, but clearly the interested parties support it. I will be supporting schedule B and not seeking a recorded vote. I'm prepared to have it put to vote now.

**The Chair:** Further discussion? Seeing none, I shall put the question. Shall schedule B carry? Carried.

Schedule C. We'll ask Mr Kormos if he would care to bring forward his second motion.

**Mr Kormos:** This is obviously with respect to schedule C. I move that clause 2(1)(c) of the Statute and Regulation Revision Act, 1998, as set out in schedule C of the bill, be amended by inserting "minor" before "changes" in the first line.

**The Chair:** Discussion?

1620

**Mr Kormos:** Having been unsuccessful at persuading the government caucus to recognize the danger of schedule C, it now falls on us to try to mitigate, I suppose, the risk this poses.

This inserts the word "minor" before "changes." If you take a look at 2(1)(c), that's the clause or paragraph I referred to earlier when I talked about subsection 1(2) of

the bill, effectively, I suppose, the preamble to the bill, though it's not technically a preamble. Instead of making changes, which is a broad concept, this amends it to say, "make minor changes that are necessary to clarify."

That, in my view, might provide some modest protection against the abuses or — and "abuse" is a pretty loaded word in terms of having a lot of implications, and maybe I shouldn't say it — yes, abuses, but probably, in greater likelihood, inappropriate changes, where one or two or three participants in legislative counsel may think they're giving effect to the intention of the Legislature but they may be way off base in terms of a broader-based view. This amends it to say "minor changes" and effectively qualifies the impact of the legislation.

**The Chair:** Further discussion?

**Mrs Ross:** I just wanted to comment on that and say that the word "minor" can be open to interpretation, depending on how people interpret that. I just want to give an example. In 1985, there were 49 separate county and district courts in the province. They were amalgamated by legislation into a single court called the district court of Ontario. Then in 1989, with further legislation, the district court of Ontario was combined with the High Court of Justice to create the Ontario Court. As a result of that, of course, the many references that referred to the district court had to be changed. So if you look at that, those were important changes, but are they considered minor or important changes that had to be made? Again, they would be automatically made by legislative counsel in their role to look at revising, amalgamating and consolidating statutes.

**Mr Kormos:** That's exactly the point.

**Mrs Ross:** It's an automatic thing.

**Mr Kormos:** What you're talking about is a scenario where legislation effectively made the reference in prior bills, any number of them, obsolete. I was here. I recall that. It made it necessary to either move bills to amend each of those other statutes to comply with the overriding legislation — right? The bill in the late 1980s overrode 1985 legislation, because the whole structure of the court and the names changed. The government of the day could have presented however many, 10 or 15 bills, to amend each and every act where they made the earlier reference or, since they passed the one bill, then it becomes relevant and applicable. There were no longer courts as described in the earlier legislation.

That doesn't have anything to do with the intention of the Legislature. That's a change that reflects something that in fact was passed by the Legislature. If anything, that's surely a minor change, because it doesn't require legislative counsel to think about the intention of the Legislature; it constitutes a minor change, the effect of which had little to do with the function of, let's say, any of those courts.

Let me put to you that, had that change not taken place, that wouldn't have nullified the power of any of those courts just because the earlier legislation hadn't been amended. Those judges and those courts would have had the same jurisdiction and the same powers. Nobody is

going to argue, "You guys didn't amend your legislation to comply with, effectively, this new Ontario Court (General Division) nomenclature when they changed over from county courts, then to district courts and then to Ontario Court (General Division) so, therefore, take off your sash" — what colour of sashes do they wear? A purple sash or whatever; I don't know what county court judges wear — "and don't hear my case."

In other words, if the legislative counsel hadn't changed that, it wouldn't have changed anything. Do you see what I'm saying, Mrs Ross? It wouldn't have nullified anything. They didn't change the law. They didn't seek out the intention of the Legislature. All they did was clean it up. That's a minor change. I'm worried about major changes, when you say "change" and when you have that subjective test of the intention of the Legislature. But what's scarier is when you can never contest it. Do you understand why that's significant?

Look at subsection 3(3). Nobody has any power to review what legislative counsel does. Oh, you're right, it goes through cabinet. Again, they don't sit around engaging in polemics about the wording of something presented to them by legislative counsel. They simply — is that a quorum call? I'll be darned — don't do that in cabinet. You get these things and, boom, they're processed and they get to far headier things, like debating about whether there is going to be such a thing as legislation to cap commercial tax increases at 10% without taking from residential property taxpayers. They talk about the political fallout from that and how people in various constituencies are going to have a huge price to pay. That's what they talk about in cabinet. You know that.

**Mrs Ross:** Have you ever sat at the cabinet table?

**Mr Kormos:** There are enough leaks. You know that. Don't play coy with me. You get leaks out of cabinet. But that's exactly the point. Why can't you live with "minor changes"? What you described is precisely that, a minor change.

**Mrs Ross:** I just want to go back to the point that this gives legislative counsel the same powers they've always had. They have never had the ability to change the law. It doesn't give them the ability to change the law; it gives them the ability to look at what's there in the statutes and regulations and make sure that they change the language and punctuation to achieve uniformity, to consolidate bills where it makes sense. Again, I go back to where I said the Municipal Act has 500 provisions. It allows them to do it on a regular, ongoing basis instead of waiting 10 years to do it.

**The Chair:** Further discussion? Seeing none, I shall put the question.

**Mr Kormos:** Recorded vote, please.

**The Chair:** Seeing that a recorded vote has been requested, it shall be deferred.

Next amendment.

**Mr Kormos:** This is an amendment to schedule C to the bill.

**Mr Tim Hudak (Niagara South):** I'd like to move a recess, Chair.



**Mr Kormos:** Chair, please, I have the floor.

**The Chair:** Mr Kormos has the floor.

**Mr Kormos:** Give no quarter, take no quarter. It's tough out there. It's called payback, friends.

Schedule C to the bill: subsection 2(2.1) of the Statute and Regulation Revision Act, 1998. There's a typo, because it clearly refers to section 2 earlier in the headline.

I move that section 2 of the Statute and Regulation Revision Act, 1998, as set out in schedule C to the bill, be amended by adding the following subsection:

"Effect of revision

"(2.1) The chief legislative counsel is not authorized to change the substance of an act or regulation when revising it."

**The Chair:** Further discussion?

**Mr Kormos:** Had but one more member rushed to quorum call, I would have called the question on that, as you can well imagine.

**Mr E.J. Douglas Rollins (Quinte):** You wouldn't do that.

**Mr Kormos:** You bet your boots I would. But I commend them for showing the discipline to make sure that they maintained a majority here. Let's make a note of who was here to hold the fort. Mrs Ross stayed here to hold the fort; Mr Rollins stayed here to hold the fort; Mr Boushy stayed here to hold the fort, to prevent an ambush by rebellious opposition members. I think that should be noted. I think you people should be rewarded appropriately for not having succumbed to the siren call of the bells but rather staying here to protect the government from the prospect of a successful amendment by the opposition. We'll have no more of those Cafon Courts, will we? But you never can tell.

1630

This is merely further qualifying or controlling the power of legislative counsel. It augments subsection 3(3) when it talks about changes that are necessary to clarify. If Ms Ross, the parliamentary assistant, says what she means and means what she says, she will speak out strongly in favour of this amendment, because she insists that the bill, in her mind, isn't intended to permit any substantial change to legislation, although it doesn't say that yet in the bill, in schedule C. This precludes or forbids legislative counsel from changing the substance of an act or regulation. I think that would be a healthy safeguard built in there and I think Ms Ross would be an enthusiastic supporter of it.

**The Chair:** Further discussion? Seeing none, I shall put the question on Mr Kormos's motion.

**Mr Kormos:** A recorded vote, please.

**The Chair:** As a recorded vote has been requested, it shall be deferred.

The next motion, Mr Kormos.

**Mr Kormos:** I move that section 3 of the Statute and Regulation Revision Act, 1998, as set out in schedule C to the bill, be struck out and the following substituted:

"Enactment of revised statutes

"3. A revised statute does not come into force until a statute confirming it is enacted by the Legislature."

**The Chair:** Discussion?

**Mr Kormos:** Very briefly, Ms Ross, as parliamentary assistant, is whipping her members on the government side of this committee who outnumber the opposition by, heck, more than two to one. There's no question about it. Ms Ross talks about how schedule C of the Statute and Regulation Revision Act merely does what is permitted every 10 years. It's only permitted every 10 years because of a bill that comes before the House. As I say, what that does is give an opportunity for legislators to review what may well have happened during the course of the last revision, (1) to review it, (2) to raise concerns, and (3) to point out things that might well be considered by legislative counsel. One thing legislative counsel does is monitor — not all of it — what goes on in the House. Surely legislative counsel would be monitoring the debate that goes on in the ninth year of every decade about the RSOs.

**Mr Rollins:** Why not do it every year?

**Mr Kormos:** Mr Rollins says, "Do it every year." Then you should join with me in defeating schedule C, because it means it never comes to the House. Do you understand what I'm saying, Mr Rollins? Schedule C means (1) the House never gets a chance to review what legislative counsel has done over the course of the previous decade — they have no opportunity to review it because there's no legislation before the House — and (2) there's no focused debate on perhaps the need for legislative counsel to consider things. Once schedule C passes as a bill, the Legislature will never again be involved in legislative counsel's changes to legislation — never again.

Ms Ross says, "Well, it happens every 10 years." Of course it does. I think that's a good thing. I think it's important that every 10 years — that means it doesn't happen frequently. Mr Rollins wants it to happen every year. God bless him. I would endorse that proposition. But what this does is give effect to what Ms Ross can merely assure us of. I appreciate she's not insincere in her assurance that the effect of this bill will not be such that legislative counsel can change the substance, but she can't assure us that the Legislature will have any opportunity to review.

What this amendment does is permit legislative counsel to do what the act says they can do, but it also requires that that revision be the subject matter of approval by the Legislature. That's called a safeguard. In a democracy, surely you need those kinds of safeguards, don't you, Ms Ross? I'm sure you believe in democracy. You wouldn't have run in this parliamentary system if you didn't have some faith and some confidence in democracy. This democratizes schedule C.

**The Chair:** Further discussion? Seeing none, I'll ask the question. All those in favour of Mr Kormos's amendment?

**Mr Kormos:** A recorded vote, please.

**The Chair:** A recorded vote has been requested. It shall be deferred.

We'll move to the next NDP motion, listed as number 5.

**Mr Kormos:** I move that section 4 of the Statute and Regulation Revision Act, 1998, as set out in schedule C to the bill, be struck out and the following substituted:

"Enactment of revised regulations

"4. A revised regulation does not come into force until it is made in accordance with the act that authorized the regulation which is being revised."

**The Chair:** Discussion?

**Mr Kormos:** Similarly, this permits legislative counsel to make the revisions that are contemplated but then requires that those revisions be turned into regulations pursuant to the act, which would mean reference to the regulations and private bills committee and consideration by them. This again is a safeguard which is the most modest of safeguards. It permits legislative counsel to do their job but it also provides for there to be some oversight, if you will, by elected representatives.

**The Chair:** Further discussion?

**Mr Kormos:** A recorded vote, please, if indeed you want to call the question.

**The Chair:** Seeing that there is no further discussion and a recorded vote has been requested, it shall be deferred.

We'll move to number 6.

**Mr Kormos:** Number 6 is entirely out of order. As a motion, number 6 reads: "The New Democratic Party recommends voting against section 5 of the Statute and Regulation Revision Act, 1998, as set out in schedule C to the bill." That's an entirely out-of-order motion but I was happy to see it included as part of a package. I would have been disappointed were it not, because we have no intention of voting for section 5. We intend to vote against it, and I would encourage fair-minded and free-thinking members of the government caucus to do the same.

**The Chair:** Shall schedule D carry? Discussion?

**Mr Kormos:** I've got to tell you, I find nothing offensive about schedule D. It effectively repeals legislation sections which are certainly of no current usage. That's exactly what I was talking about when I talked to you earlier. They could have stayed there and no harm would have been done, but if this government wants to repeal them, good. God bless them.

**The Chair:** Further discussion? I shall put the question. All those in favour of schedule D? Carried.

Shall schedule E carry? Discussion?

**Mr Kormos:** We've got to have discussion. This is quite right. Once again, you heard what I had to say at the onset. Let's take a little look, a speedy one, at what this schedule does. Again, it's another omnibus bill. But look at the consistencies: "The minister may by order require the payment of fees for licences or permits, or a fee or a charge for the holding of an amateur boxing or wrestling contest...and may approve the amount of those fees."

1640

What's interesting is I only just read in the newspapers at the end of last week and during the weekend about the brilliant litigation on the issue of probate fees, which was very interesting. The lawyer, whose name I should remember, and I apologize to that lawyer —

**Mr Michael Wood:** Fallis.

**Mr Kormos:** Peter Fallis, yes. Quite right, Peter Fallis. A brilliant argument, a very creative one. He suggests, and others have joined with him, that this decision — you folks are all aware of it. What's interesting is that the government said that they're just going to keep doing it. The government said, "We're going to keep doing what we've been doing anyway," because of a time frame that's been permitted.

Boy, you talk about scofflaws. People have been critical of me. Please, give me a break. This government has no regard for orders of the court. There's the pay equity issue. It insists on still calling the teachers' work action under Bill 160 illegal, when in fact the court ruled that there was nothing illegal about it. Had it been illegal, *prima facie*, there would have been an injunction granted. Maybe I'm stretching it a little bit far there.

I find it very interesting why the members of the government on this committee would vote for schedule E when it in effect gives this non-legislative power of taxation. You talk about user fees.

Let's put it in the context of amateur boxing. Down where I come from, we've produced some top-notch boxers, some young people. Tommy Glesby is one of them, who participated in the Olympics twice now and is in professional boxing and has been down in Vegas and is in Windsor right now training, preparing to get back into the ring. I've known Tommy since he was a kid. Tommy started as a young boxer with Degazio's boxing club.

There was Degazio's club, and that's not operating any more, but there's also Ray Napper's club, which is still over on Park Street, in the hall there. Ray died a couple of years ago but his family is still maintaining the club.

We're talking about young kids. I've got to confess I'm not familiar with amateur wrestling exhibits taking place as frequently or as commonly as boxing does at the high school level and at college and university. I'm not aware, at least not in the Niagara. We don't have any sort of wrestling clubs the way we have Napper's Boxing Club.

You've got kids in those clubs. I just spoke with one of them the other day, Adam Kernaghan, a young fellow who lives over on West Main Street in Welland, just around the corner from me on Bald Street — lives with a single mom — for whom getting involved with Napper's — I was very impressed. I saw him over at Sang Ahn's corner store. It used to be a Becker's but Sang Ahn bought it a year and a half ago; a Korean family, people from Korea. I saw Adam over there. From time to time, I've had him do some yard work and work like that and he asked me if there was going to be any work in November and I said, "Yeah, I think we've got constituency week." That was before I got the fax saying that the justice committee is sitting during constituency week. So much for that.



Adam's going to be far more disappointed than I am. But Adam said, "I'm eager to work for you again."

**Mr Ted Chudleigh (Halton North):** It's the week after constituency week.

**Mr Kormos:** What week is constituency week?

**Mr Chudleigh:** The week of the 9th.

**Mrs Ross:** It's the 9th.

**Mr Kormos:** Oh, really? Remembrance Day falls in the middle of constituency week. Good. OK, fine.

*Interjection.*

**Mr Kormos:** Look, you guys may be far more interested in your time off. For me, it's work, work, work. You don't think about these things. I thought: "Oh yeah, great. My House leader doesn't mind committing me to committee work during constituency week. No, other members of caucus don't have it, just me in justice." OK, so that's good. This is the week after constituency week.

**Mr Rollins:** Are you looking for an excuse?

**Mr Kormos:** No.

Adam said, "Look, Mr Kormos, in November I want to do some work for you," because he makes a few bucks. As I say, it's a single-parent family and they struggle; good people, good folks. His mother is just a marvellous woman.

I hope Mr Crozier gets back soon. Adam said, "Don't do it during the first week in November, because we've got the Golden Gloves," the amateur boxing.

So here's a kid — I don't want to centre out Adam; Adam knows I wouldn't do that — a good kid. I know his older brothers, I've known the family, all of them, since they were little. But for Adam, I couldn't have been happier to hear that he's over at Napper's Boxing Club engaging in that.

Is he going to become a brute and go around thumping people out? On the contrary. The young people I know who have been involved in boxing clubs and doing that sort of thing in fact acquire a discipline which makes them far less likely to get involved in impromptu fights out there on the street. They acquire discipline, they acquire some self-esteem and some real pride.

So look what you've got. You've got the prospect here — Mr Crozier, God bless, thank you very much — you've got the power isolated in the minister to set fees, of all things, for amateur boxing events. Please. Are there fees? Of course there are. I know you've got commissioners who have to come down and supervise the fights, you've got to make sure that these kids — I say "kids"; they're young adults as well — make sure there are doctors present, make sure they don't box more frequently than what the regulations provide, make sure kids who have been injured aren't in a fight again the next week etc. I understand there are some costs involved. This is exactly what I was talking about earlier. You're giving the minister fiat power to set fees.

Let's keep on moving down because this is repeated, this is a theme that goes on and on and on through virtually all of the bill wherein there's a fee-setting procedure. Take a look: "The minister may make regulations prescribing forms.... The minister may by order require the

payment of fees and may approve the amount of those fees...." I'm looking at section 271.1.

I would like to point out — and I haven't read the decision, I've only read the newspaper reports, the case by Mr Fallis. These may all be, and I hope they are, challenged. I hope they are challenged, because this, among other things, puts the big L word — you know the L word, three-letter word? Rhymes with "by" and "high" and "sigh" and "die" and "my." You know the word. It rhymes with nigh also. It's the word I can't say but it's the L word, three letters, rhymes with "sigh" and "nigh" and "by" and "high." This whole business about "We don't tax, no new user fees," puts it to the big L word, because what this schedule is about in the largest part — and there's other stuff in here too, please, the Business Corporations Act. Please, give me a break. I'm not raising an issue about that.

I seized on the business of amateur boxing because I had seen young Adam just before the weekend and was so pleased. Again, the prospect of enhanced fees for what I consider a very healthy activity for young people in our communities, I find that repugnant. It seems to me a far better investment and we should be supporting these clubs. They don't get any government money, you know that, don't you? When Ray Napper ran the club he was out of pocket. He worked at GM. It cost him a fortune. I know that for a fact. It cost him a fortune to run Napper's boxing; out of pocket, boom, boom, boom constantly.

1650

Red tape? I guess when you eliminate any democratic consideration of new fees, it eliminates the red tape, the need to go through the rigmarole of, let's say, regulations. But I'm not going to support a section that creates yet more power for a minister — not Lieutenant Governor in Council, not through the process of regulation, but a minister to set fees without justification, without public debate.

You know the argument with the issue of probate fees, that they raise far more money than it actually costs, that it's a profit-making exercise. It was pointed out in some of the press coverage that that was applicable to a few other areas. As a matter of fact we saw it during estimates a couple of years ago. Remember when all the new user fees came in? We in the opposition had a heyday saying to ministers here, "It only costs you X dollars to run registry offices, but your fees from registry" — this is, what do you call it, state capitalism. You guys are making profits.

**Mr Crozier:** Profit centres.

**Mr Kormos:** That's right, and you're calling them user fees. They're not user fees, guys. It's called taxes on the most unwitting. I'm voting against this schedule for that reason, recognizing that there's stuff in here that could be pointed out, if the government wants to take the time, that in itself is relatively inoffensive: "Change of Name Act," "registrar general," "made by order," "set and collect fees" — that's not even the minister any more, is it?

**Mrs Ross:** Yes, the minister.

**Mr Kormos:** Registrar general? Does the minister know?

**Mrs Ross:** Yes.

**Mr Kormos:** OK.

**Mrs Ross:** Always has been.

**Mr Kormos:** No.

**Mrs Ross:** Yes.

**Mr Kormos:** I'm not going to get into an argument with you. I know I tried to exercise my powers with the registrar general for a brief period and got into big - it's a long story, I'll tell you about it. As a matter of fact it had to do with Bambi Bembenek. It's a good story. It'll be in the book.

**Mrs Ross:** It will be in the book?

**Mr Kormos:** It'll be in the book. It's a fascinating story, though, about that ministry and Bambi's application for a marriage licence, as a matter of fact. But there was horrible registrar general status and supervisor status. But I take your word for it -

It's even worse then. It isn't an independent civil servant; it's the minister himself or herself. Yikes, what did you throw the fly into the ointment for? I was prepared to give a little credit and say, if it's the registrar general, who's just a civil servant, he or she might actually be fair and calculate real user fees instead of making profits. There's another illustration.

Sorry, Ms Ross, I'm not going to support this schedule for those very reasons, understanding that there's some stuff in here that — but, again, the bulk of it I find very offensive.

**The Chair:** Further discussion?

**Mrs Ross:** I just want to make a comment about the fees. The fees that the minister would set have already been approved by the estimates process or through management board. So there is political accountability there and, of course, through cabinet as well. That is the only point I really want to make; the fees have been approved by another body first.

**The Chair:** Further discussion? Seeing no further discussion -

**Mr Kormos:** A recorded vote, please, sir.

**The Chair:** A recorded vote has been requested, and as such shall be deferred.

Schedule F: Discussion?

**Mr Kormos:** This one is interesting. Let me tell you why. There's a repeal of legislation and so on, but "an alternative methodology should be used for approving or fixing just and reasonable rates and other charges."

Look at the qualification we've got here, "just and reasonable rates." I hope you guys aren't fearful, now that I've raised this, that somehow this sneaked through, that some bureaucrat did a number on you. Because in view of all the other sections which permit fee charging without any justification, here we have the requirement of "just and reasonable rates." I'm prepared to have the question put now.

**The Chair:** Further discussion? Seeing none, shall schedule F carry? Carried.

Schedule G: Government motion as listed on committee paper 7.

**Mrs Ross:** I move that subsections 15(1) and (2) of schedule G to the bill be struck out.

**Mr Hudak:** Just to reflect on that for a moment, this comes from the College of Nurses as well as a number of other colleges which felt that the status quo before this change to Bill 25 was probably a better way of going about it. So reflecting what we heard before the committee, we're moving this amendment.

**Mr Kormos:** I was here when that submission was made. People might recall that I questioned them in the limited time available. If I recall correctly, they sought the deletion of these sections. I'm satisfied that no person will be unduly prejudiced by extending the time limitation. There are so many good reasons why a person, any one of us, could find themselves outside a limitation period. The second qualification gives reasonable grounds for delays in making submissions. I appreciate the government's responding to the submission by the college. But it strikes me that these are exceptional circumstances: There has to be no prejudice by permitting the delay. You're talking about the prospect of a delay of one day, Mr Hudak. One day beyond the time frame and you're out of the ballpark, right? You're talking about having to prove there's no prejudice to either party by virtue of the delay and, more importantly, reasonable grounds for your delay. Again, the imagination could run wild. I appreciate that the college sought this. Their argument was so that things wouldn't get protracted, so you could start getting down to the nitty-gritty and making rulings.

This came from the College of Nurses. I didn't hear, for instance, from ONA on the issue and, with respect, and I appreciate that this amendment reflects the submission made by the college. I really am very uncomfortable supporting it. In the limited time available, I asked the college why they felt that way. They responded, and I have no quarrel with their response.

Think about it: One day's delay could put you out of the ballpark, even if it doesn't cause prejudice. If it causes prejudice, I understand, and surely the amount of prejudice would be determined by the length of the delay. If you're talking about six months later, then you'd be hard pressed to make your case for the extension of a limitation period, right? At six months, you're talking substantial, but the prospect of missing out on one day —

I can't think of any other area of litigation or administrative appeal, those sorts of things, where there isn't a provision giving the board or the commission or a judge power to extend time limitations — OK, I guess under the Limitations Act per se, but there's even been some recent litigation on the Limitations Act. I think I recall some litigation where limitations acts are not always as hard and fast as they used to be, where courts have taken into consideration some of the really extenuating circumstances.

Clearly there's one area where that's come up specifically, where people are child victims and how unfair the Limitations Act is to a child victim. Because



how can a child, especially if the child is victimized by a parent or a person who's in the role of a parent, who normally would be the person used to engage in the litigation — again, there's a legal name for that where the adult is called upon to sue or litigate in the child's name. Is that guardian ad litem?

**Mr Bob Wood:** Used to be.

1700

**Mr Kormos:** OK, guardian ad litem, where the child has to rely upon their own parent, who may be the perpetrator of the crime, the perpetrator of an assault. So the courts have commented on how unfair it is to expect a child to meet a limitation period.

Mr Hudak, I presume this amendment in response to the college comes from your minister's ministry. With respect, I disagree with the college on this and do not find their argument persuasive. I congratulate whoever drafted the original section. You have to show no prejudice and you have to give a reasonable excuse for your delay. It's a tough one to overcome. I'm not sure whether you really think it's fair in the original form or fairer in the new form.

**The Chair:** Further discussion? Seeing none, I shall put the question.

**Mr Kormos:** Recorded vote, please.

**The Chair:** A recorded vote has been requested. It shall be deferred.

I ask that the government member bring forward committee motion 8.

**Mrs Ross:** I move that subsection 83(5) of schedule 2 to the Regulated Health Professions Act, 1991, as set out in section 19 of schedule G to the bill, be amended by inserting "Without limiting the generality of section 36 of the Regulated Health Professions Act, 1991," at the beginning.

**Mr Hudak:** The goal of section 19 of schedule G was to bring in a confidentiality requirement for quality assurance programs in order to ensure that there are good health care outcomes when professions review their work through the colleges and through their own mechanisms there.

We had some concerns raised by the College of Physicians and Surgeons as well as the Federation of Health Regulatory Colleges of Ontario that the information in a QA program confidential in this way may weaken the general confidentiality provisions of section 36 of the Regulated Health Professions Act. We didn't intend that through this act, and this amendment that was brought forward by the CPSO at committee makes our intention most clear. We support the suggestion by the CPSO and I recommend voting for this amendment.

**Mr Kormos:** Please indulge me. I don't have the Regulated Health Professions Act in its original form. "Without limiting the generality of section 36" — can you tell us the impact of 36? I understand subsection 83(5) of the proposed bill. I don't know what "Without limiting the generality of section 36" means.

**Mr Hudak:** Chair, there's a member of the legal branch of Health who did a good job explaining to me

when I was researching this exactly what "the generality of section 36" was about. I could call her forward or we could refer to this later on, whatever procedure this committee is following.

**Mr Kormos:** I think it's important for the committee to — again, I'm acknowledging I don't know what "Without limiting the generality of section 36" means. It would be helpful if we could be told that, if possible.

**Mr Hudak:** I call, if I could, a member from the legal branch for the benefit of the committee.

**The Chair:** Could you state your name for Hansard, please.

**Ms Rebecca Gotlieb:** Rebecca Gotlieb.

Section 36 of the Regulated Health Professions Act is the general confidentiality provisions that apply and govern the colleges. There is one particular subsection that makes confidential records that are acquired for the purposes of proceedings under the Regulated Health Professions Act at subsection 36(3). There are other sections under that act that place explicit obligations on the college to make confidential certain records with regard to the administration of the act. There was some concern expressed by the College of Physicians and Surgeons that if you're making specific reference to the quality assurance records, it may weaken the general phrasing of section 36, in particular subsection 36(3), which makes reference to documents collected for the purposes of certain proceedings under the act. So they wanted to make it clear that it did not weaken the general language of section 36.

**Mr Kormos:** If I understand that then, the relevance of this amendment is more so to the latter part of the amendment to subsection (5). We're talking about civil proceedings, right?

**Ms Gotlieb:** That's correct.

**Mr Kormos:** If somebody sues a hospital or a nursing person for negligence, the contents of the QAP — is that the acronym for that?

**Ms Gotlieb:** It's the quality assurance program, QAP.

**Mr Kormos:** Yes, QAP, yet another acronym. That cannot be subpoenaed, right? Fair enough. That part I understand, but what you're saying to me then would appear to be more relevant because you're saying, "Without limiting the generality of section 36," which is yet another confidentiality, non-subpoena type of section, if I'm understanding it. That would apply more so to the latter part of subsection (5), correct? There seems to be an absolute prohibition of using QAP material in the course of civil proceedings. Fair enough. So then 36 would be irrelevant to this absolute bar to using QAP information in civil proceedings, as I read it. So the only reason you would not want to limit the generality of section 36, which you say is a broader section protecting information acquired, not necessarily QAP information — is that why we're including it? Because you don't want to include just QAP, you want the broader range of information that might be acquired by the college.

**Ms Gotlieb:** Currently section 36 does protect certain records, but they don't make it express. Subsection 36(3) specifically says that no record of a proceeding under this

act, the Health Professions Act and the Drug and Pharmacies Regulation Act or any statement or thing prepared for etc "is admissible in a civil proceeding except for proceedings under the RHPA." There was something about malpractice actions, that sort of thing. It wasn't clear whether quality assurance programs were caught by that language, so we made a clarifying amendment in the confidentiality part dealing with quality assurance way back in the procedural code, subsection 83(5).

**Mr Kormos:** I want to make this very clear. You're not suggesting that litigation, for instance, for negligence would be a proceeding under the RHPA?

**Ms Gotlieb:** No, it's not.

**Mr Kormos:** That's right. That's exactly what it isn't.

**Ms Gotlieb:** That's right.

**Mr Kormos:** Thank you kindly.

**The Chair:** Further discussion?

**Mr Kormos:** Again, very briefly, I have no quarrel with the amendment, except do you know how frustrating it is for a litigant — with no disrespect to health care professionals — do you know how hard it is to seek a remedy if you have been done wrongly within our health care system? You have got the biggest, most formidable, most significant legal battle of your life. I'll bet you there isn't a single MPP whose constituency office hasn't been involved, however peripherally, with somebody who has sought a remedy against it.

It's unfair to try to identify malpractice as being rampant. It isn't. It's the rare exception. But by God, it's an uphill battle and — I'm just tossing this figure out — 99% of however few victims of negligence or malpractice there are never even initiate a process because the hurdles are formidable.

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I understand why you want to ensure the integrity of the QAP by telling people that the contents are secret, cannot be subpoenaed as evidence, but what do you say to a person who may have been seriously and permanently injured as the result of the negligence of a practitioner — this is purely hypothetical — who may have been told, "You ought to see what's in that person's assessments"? I assume there might be assessments under the QAP program. "Boy, you ought to see it. It's as long as your arm, a list of things pointed out during the course of QAP."

Again, I don't know how the QAP process takes place. Can you imagine how frustrated you'd be as a litigant, saying, my God, there's good evidence sitting there that supports your case, that makes it clear you're not just another nut or wacko trying to go after deep pockets — that's how you're going to get labelled, you know that — and then you can't access it?

I'm not going to oppose the amendment, of course, because that has nothing to do with this argument. The argument is with subsection (5) and I'll make the argument on behalf of the proponents of subsection (5) that the integrity of any QAP depends upon what effectively here is confidentiality, but I do want to express my hesitation,

my nervousness, my apprehension about barring bona fide litigants from access to that information.

I would far sooner see a situation that's parallel to what I'm told is the situation in some criminal proceedings, wherein a judge decides whether you should be able to access certain bits of evidence that would otherwise be considered confidential. In other words, if you were a litigant, you wouldn't prima facie have access to QAP information, but you could apply to have a judge determine whether there was sufficient information in there — they call it probative and relevant; I think that's the phrase they use in court — where at least you could make the application.

I understand the intent of subsection (5) here, the amendment. I don't agree with it in principle, because I agree that you've got to maintain the integrity and you've got to encourage candour and forthrightness. But what you don't have here is, however absurd this sounds — and it's purely hypothetical, because one would like to think that you would never have a QAP file, or whatever it's going to be called, that shows a list as long as your arm of misdeeds by a particular practitioner, but one would hate to think that such a thing could exist and that a bona fide litigant seriously seeking compensation for injuries that might have been caused to him or her couldn't access it, ever, no matter how relevant and probative it is.

I should say I'm not going to oppose the amendment. I have indicated I don't support that subsection. I could vote against it but I'm going to be overruled, outnumbered two to one here by the Conservatives. I would ask them to think about it and I would appreciate their comments.

Think about a member of your family. Think about yourself. Think about one of your kids. If this is a little bit melodramatic, so be it, but the fact is that people who do seek remedies for injuries, however few they are, are somebody's family member, somebody's kid, somebody's parent. You receive information. You know how it happens. Sometimes it's brown envelopes or you get a call from a colleague saying, "Boy, if only you could use what's in that QAP" — whatever it's called, file or record — "it would prove your case."

I understand the principle here and the motive for the legislation, but it's the injustice to that person, to any one of us, to any one of our kids, to any one of our parents, of not being able to at least go before a judge and say we'll live with the judge's decision whether that evidence should be admitted.

In other words, do you know what I'm saying, Mr Hudak? Listen, please. This is the language that I think courtrooms might use: whether the probative value outweighs the interest of maintaining confidentiality. Right? That is to say that somebody should be able to rule on whether the strength of what's in there — and it could be to the contrary.

Think about it. It could be to the contrary, because it would seem to me that this isn't a privilege that's being held by, in this case, let's say, a nurse. This isn't a privilege such that she or he can waive it. If you have privilege, you can waive it. You can say, "I give



permission for the contents of my file to be utilized." This would seem to bar it from ever being utilized as evidence, because here I am trying to draw a picture of a scenario where an aggrieved person wants to access a file that may prove their case because of a pattern of negligence or a pattern of — I didn't even want to get into the sort of things that can happen. All of us have had people in our offices who have grievances. We've heard the stories. What about the practitioner who is accused of certain types of behaviour but who says, "But if you had a chance to see my QAP file, you would see that I have been supervised in this area 20 times over the course of the existence of the QAP program and come out with flying colours each time"? What about that, Ms Ross?

**Mr Rollins:** Wouldn't you still win?

**Mr Kormos:** Mr Rollins, what about the person who's being accused of wrongdoing, whose QAP file could clear them or at least provide strong evidence that they're highly unlikely to have done what's alleged they have done because they've been supervised over a course of time and always received A-pluses? It seems to me that person might have an interest in saying to a judge: "Judge, I want you to review the QAP file. If you find that its probative value does not outweigh the need to keep QAP private, then I'll live with that. However, if you find that the probative value, in other words, the strength of that, is such that the privacy has to be overridden" — because they don't talk here about the capacity to waive.

If you're precluded from getting hold of my OHIP records, FOI wouldn't permit it, but I am entitled to waive that. I'm entitled to access to my OHIP records, so I can waive my privilege vis-à-vis the health insurance plan. I can do it. Here it looks like even the practitioner can't do it because it's barred from being evidence. Interesting proposition. I'm concerned about it. It is not admissible in evidence in a civil proceeding. Even if the person who's the subject of the QAP wants to use it, it's not admissible.

Is that not an interesting scenario, Chair? Think about it. Seriously, think about it, if you were in that position where you could not use your QAP information to defend yourself against a false allegation because it's not admissible as evidence. Interesting.

**The Chair:** Further discussion? Seeing none, I shall put the question on the motion as presented by the government.

All those in favour of the motion as presented? All those opposed? The motion is carried.

We now move to the next amendment.

**Mrs Ross:** I move that clause 95(1)(d) of the Regulated Health Professions Act, 1991, as set out in subsection 23(1) of schedule G to the bill, be amended by striking out "subsection 18(3)" at the end and substituting "subsections 18(3) and 22(8)."

**The Chair:** Discussion?

**Mr Hudak:** By way of explanation, this is just correcting a drafting error from the original version of Bill 25. The intention was to include subsection 22(8). It was left out in the drafting. We thank the College of Dietitians

for pointing that out to us and we move to include it through amendment.

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**Mr Kormos:** It would seem that with the enthusiasm that the government members have for schedule C, they could have left that up to legislative counsel to rectify. There you go.

**The Chair:** Further discussion? Seeing none, I shall put the question on the government motion as presented.

All those in favour? Opposed? The motion is carried.

Discussion on schedule H?

**Mr Kormos:** I refer specifically to section 7: "The board shall be composed of at least 12 and no more than 20 members who shall be appointed by the Lieutenant Governor in Council on the recommendation of the Minister of Health." Well, surprise, surprise. The interesting thing would be if the people who were being appointed were on the recommendation of some broader-based collection of constituents out there so that there could be some balance and variety of interests being reflected by the board. What "recommendation of the Minister of Health" is effectively saying is it's a ministerial appointment, as compared to a Premier's office appointment. There are two types, as you know, by protocol usually. This one is statutory. Sometimes the ministers — except no minister is really allowed to do it without the permission of the Premier. All I'm saying is — surprise, surprise — "on the recommendation of the Minister of Health." If you're going to engage in that sort of protocol, why don't you have a broader-based or a more expansive source of referrals? What we're talking about are political appointments, pork-barrelling, people who are card-carrying, dues-paying faithful servants of the Conservative Party provincially and probably the Reform Party federally.

It was interesting, because we were here at the government agencies committee the other day; again, a Tory appointment, a Tory member, but he only belonged to the Tories provincially. He didn't belong to the Tory Party federally, so I didn't get a chance to ask him which leadership candidate he was going to support, not that it was any of my business. It's a secret ballot. But I figured, what the heck? Preston Manning isn't running for the leader of the Conservative Party, so he wouldn't have any interest in the process anyway.

It's interesting that Conservatives would belong provincially to one party but federally to another. Go figure. This is simply endorsing the process of a political appointment and I've always had concern about that. This doesn't do anything to quell my fears. I hope that's the right use of the word "quell." It institutionalizes pork-barrelling. Should I have expected more? Probably not.

**The Chair:** Further discussion? Seeing no further discussion, I shall put the question.

All those in favour of schedule H? All those opposed? Carried.

Schedule I: I ask the government members to come forward.

**Mrs Ross:** I move that section 28 of the Conservation Authorities Act, as set out in section 12 of schedule I to the bill, be amended by adding the following subsections:

“Powers of entry

“(19.1) An authority or an officer appointed under a regulation made under clause (1)(d) or (e) may enter private property, other than a dwelling or building, without the consent of the owner or occupier and without a warrant, if,

“(a) the entry is for the purpose of considering a request related to the property for permission that is required by a regulation made under clause (1)(a), (b) or (c); or

“(b) the entry is for the purpose of enforcing a regulation made under clause (1)(a), (b) or (c) and the authority or officer has reasonable grounds to believe that a contravention of the regulation is causing or is likely to cause significant environmental damage and that the entry is required to prevent or reduce the damage.

“Time

“(19.2) Subject to subsection (19.3), the power to enter property under subsection (19.1) may be exercised at any reasonable time.

“Notice

“(19.3) The power to enter property under subsection (19.1) shall not be exercised unless,

“(a) the authority or officer has given reasonable notice of the entry to the owner of the property and, if the occupier of the property is not the owner, to the occupier of the property; or

“(b) the authority or officer has reasonable grounds to believe that significant environmental damage is likely to be caused during the time that would be required to give notice under clause (a).

“No use of force

“(19.4) Subsection (19.1) does not authorize the use of force.

“Offence

“(19.5) Any person who prevents or obstructs an authority or officer from entering property under subsection (19.1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.”

**The Chair:** Discussion?

**Mr Kormos:** If I can put a question first. We've got (19.1), (19.2), (19.3), (19.4) and (19.5) in the amendment to section 12 of the bill, schedule I, which is section 28. I'm just wondering, are we creating more work for legislative counsel to make the numbers consistent? We're amending section 28 with sections (19.1), (19.2), (19.3), (19.4), and (19.5). Do you understand what I'm saying, Chair?

**The Chair:** Yes.

**Mr Kormos:** More work for legislative counsel. If the government were more careful when they did this, legislative counsel wouldn't have to be revising these bills all the time. If we pass this, if it's passed, legislative counsel is going to have to utilize its powers under schedule C right away to make the numbers conform. Ms Ross may want to change her motion right now, I don't know. The

motion says she's amending section 28 with sections (19.1), (19.2), (19.3), (19.4) and (19.5).

**Mr Chudleigh:** That's the way we've always done it.

**Mr Kormos:** Are you sure? I don't think so. I'm just trying to be helpful.

**Mrs Ross:** I know you are.

**Mr Chudleigh:** We appreciate that.

**Mr Kormos:** It's about time.

**Mrs Ross:** Chair, could we get some clarification of what Mr Kormos has raised here with respect to the numbers?

**The Chair:** Are you asking legislative counsel to respond?

**Mrs Ross:** Yes.

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**Mr Kormos:** Chair, these are not section numbers; these are subsection numbers. OK? So it's subsection (19.1). My apologies for creating a tempest in a teapot here. These are effectively amendments to subsection 28(19). So you've got 28(19), which is already in the bill, which is the liability for certain costs.

**Mr Crozier:** I think they're just adding them.

**Mr Kormos:** Because we've got subsection (19), which is on page 166 of the bill and this is (19.1), (19.2), (19.3), before subsection (20).

**The Chair:** Further discussion?

**Mr Kormos:** I wondered if Ms Ross, having presented these, having moved them, was going to explain them.

**Mr Chudleigh:** Just briefly, this amendment clarifies the conservation authority officer's right to enter private land, other than a dwelling, for the purposes of inspecting or enforcing conservation authority regulations. It also makes provision for their access in an emergency in order to prevent environmental damage from occurring, and it clarifies that authority for them. No such clarification exists in the existing act.

**Mr Kormos:** This is a matter that was raised by the federation of agriculture, as well as a property rights organization based in Ottawa, if I remember correctly. I was very pleased that they had raised this. OFA, along with its regional groups, has been very concerned.

I have no quarrel with clause (b) of subsection (19.1), when you're talking about the need for emergency entry. I appreciate that the dwellings or buildings — I assume that means structures as well. “Building” implies something other than structure. For instance, however bizarre this is — as a matter of fact, I was up at Yungblut's farm this morning on the way up here because they had a big fire on the weekend up on Merrittville. It was tragic. I talked to Mr Yungblut and his son. They lost three cows; saved 37. The cows are all out in the pasture now. But all that's left of the barn — it was an enormous barn, well over 100 years old, but added on to it was the silo.

The silo is not a building, probably, according to most interpretations, but it's certainly a structure. If you say that's a bizarre sort of illustration — could one search a silo? I don't know.

**Mr Chudleigh:** You won't be entering a silo.



**Mr Kormos:** That's right, exactly, but it just comes to mind because I was down at the farm this morning on the way up here.

So I would have preferred one that said "structure" rather than "building." I have no quarrel with the provision that in emergency situations you allow a conservation officer to enter on to property. But what you've still done, Mr Chudleigh, is embrace the prospect of warrantless searches, entering on to property without a warrant. I appreciate that you've excluded dwelling and building. I would have rather seen "structure" there because "structure," to me, is more embracing. But what justification, when you don't have an emergency, is there for a warrantless search?

I appreciate that if you're talking about my little postage-stamp-size property where I live in Welland, I mean, heck, you don't have to enter on to the property to see it. You're on the sidewalk, boom, there's the property and that's all there is to it. But we've obviously got scenarios where you've got acreage upon acreage upon acreage where what you're doing with this legislation is seeing a conservation officer, without an emergency or reasonable — and for a conservation officer, after the fact, to have to prove that there was an emergency when in fact there may not have been one, I appreciate that it's sufficient reasonable grounds. I appreciate that.

But why in the former part, clause (a), you would permit warrantless searches is beyond me. I really don't understand. It's not an onerous procedure. You're not talking about emergencies.

**Mr Chudleigh:** If there's not an emergency, he needs permission of the tenants or the owner.

**Mr Kormos:** Or occupier.

**Mr Chudleigh:** Pardon me? Or when the owner is not the tenant, he also needs permission from the tenant.

**Mr Kormos:** Then why does (19.3) talk merely about reasonable notice, not permission? Then it's furthering an offence to try to prevent an officer from entering. I understand why you'd want that in there. So, we're not talking about permission, we're talking about notice.

**Mr Chudleigh:** That's 19(3).

**Mr Kormos:** Quite right.

**Mr Chudleigh:** Now go back up to 19(1)(a).

**Mr Kormos:** Yes, "without the consent of the owner or occupier." Do you see what we've got here? They enter without the consent of the owner or occupier.

**Mr Chudleigh:** Only on those conditions

**Mr Kormos:** I agree with paragraph (b). I agree in the emergency. But why would paragraph (a) be there? For an investigative purpose? There may be good reason and I'm prepared to hear it. Here's a case where you don't have permission. Granted you've got to give notice, but that could be, I don't know, a phone call. Hopefully you'd like to have written notice just to prove you have it. In an emergency, I understand. But where you don't have an emergency — and once again, I can't sit here now and give you a "for example." Who knows? But all the more reason to say to a conservation officer — because you're talking here about somebody who has the status akin to a

peace officer. Right? For instance, if a conservation officer gets assaulted, I'm not sure, but I suspect he or she may be a peace officer under the provisions of the act. You're authorizing warrantless searches, in benign situations. In an emergency situation, I agree, by all means.

**Mr Chudleigh:** Tom, would you like to come up and clarify this for Mr Kormos?

**The Chair:** If you could identify yourself for Hansard as well, please.

**Mr Tom Coape-Arnold:** Tom Coape-Arnold, Ministry of Natural Resources.

This motion is related to the next motion. The two motions between themselves make firstly a provision for a conservation officer to obtain the consent prior to entry, of the owner or the occupier, and if that is not acquired, that a warrant under the Provincial Offences Act be obtained. That's a standard clause that applies to all of the Conservation Authorities Act, with two exceptions. The next motion refers back to those exceptions and they are in the instances where the owner or occupier has an application before a conservation authority for a permit under the regulation and as part of that application for permit the applicant provides permission for entry for the purposes of inspection only relative to that permit, and that is (19.1)(a). That's very prescribed in terms of its powers. The other exception is (19.1)(b), where without a warrant the officer can enter in very specific circumstances of an environmental emergency. So the two amendments are connected.

**Mr Kormos:** I appreciate you referring to amendments 10a, 10b, 11 and more particularly 12, which is the 30.1. Okay. But my problem is with subsection (2) there, because an officer shall not enter land without the consent or the authority of a warrant but subsection (1) does not apply to entry under clause 21(1)(b) or subsection (28)(19.1). So I go back to (19.1), which is amendment 10a. This (19.1) is excluded from the requirement to obtain a warrant. Am I correct in that regard? Because it says, subsection (1) of 30.1 is the requirement for a warrant.

**Mr Coape-Arnold:** That's correct.

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**Mr Kormos:** Right. Then it goes on to exclude (19.1) from subsection (1) of 30.1, so we're back to where we started. Again, I may well be wrong and I appreciate your help on this. We go back to where we started, where you've still got in clause (b) you've got an entry, "in a case of urgency or emergency." I'm paraphrasing it. I'm using simple language. Right? But in paragraph (a), are we not talking about investigative searches there?

**Mr Coape-Arnold:** No. We're talking about searches that are related to an application for a permit under the act and under the regulations. The individual would go in, apply to undertake a certain activity and as part of that permit there may be an inspection required. That permit would include permission or entry.

**Mr Kormos:** But, you see, it's "without the consent." Fair enough. If I'm applying for a plumbing permit for my house and I don't let Dick Proctor, from Welland — the

same name as the fellow who caught Andy Scott on the airplane; a different person — come into my house to inspect my plumbing, no way am I going to get a permit. Right? Appreciating what you're saying, why would you have "without the consent"? All I'm saying is that you're creating here, for somebody like me, who tends to be suspicious of authority — I grew up in the 1960s. Everything I suspected then, has been proven to be true, but then, I only suspected. Why are we confusing it here? Why are we mixing this up, "without the consent"? Why wouldn't there be consent if it is for the purpose of considering a request? Why would you want to put a conservation officer in that weird sort of limbo?

Do you know what I'm saying? If I, as the owner, don't let him on to my property, then obviously I'm not going to get my permission. Right? In other words, if I apply for a plumbing permit, the plumbing inspector doesn't acquire a right to go into my house just because I've applied for a permit to do basically a warrantless search. I don't get the licence if I don't let him in. I appreciate what has happened here is that the Bill 25 was written, schedule I — are we sitting again tomorrow?

*Interjection.*

**Mr Kormos:** Okay, because I want to talk about schedule J.

**Mr Chudleigh:** Not necessarily.

**Mr Kormos:** Look, unfortunately we're going to be, because I'm going to talk about schedule J, which is the repeal.

I appreciate what you're doing is after the original schedule I was written, so you're trying to respond, and I appreciate your trying to respond to the very important issue — and I think you are — of warrantless searches, warrantless entries that were complained about by OFA and by the property rights group out of Ottawa area. Why are we confusing it, though, by permitting warrantless searches — sorry, I keep getting obsessed with that — warrantless entries without consent? That's what it says, "without the consent of the owner," and warrantless if it's in the course of an application for a permit.

All I'm saying is that this creates weird and strange areas. How do you respond? I'm not arguing with you. I appreciate that you and others have tried to respond to the OFA issue. But what's the difference between this and me applying for a plumbing permit for my old house on Bald Street but then telling the plumbing inspector, "You can't come into my house"? Surely then I don't get the plumbing permit and surely we don't want a plumbing inspector, even in the pursuit of investigating my plumbing or status, to be able to, willy-nilly, without consent, enter my property. I guess I'm arguing for the paramountcy of property rights here. Some people might say that's a peculiar thing coming from a person of my political stripe, because usually it's the right wing that's associated with entrenching property rights in the charter and all that sort of stuff.

All I'm telling you is that obviously I'm extremely sensitive to the issue of warrantless and permissionless entries or non-consensual entries. I appreciate what you're saying, Mr Chudleigh, but why are we adding this in?

We're basically permitting a warrantless, non-consensual entry because somebody has applied for a permit. I say clear it up, avoid non-consensual entries, because the clear ramification is that the person doesn't get a permit if she or he doesn't accommodate the officer conducting the investigation or inspection for the purpose of applying for permission.

**Mr Chudleigh:** You're suggesting that (19.1)(a) doesn't need it.

**Mr Kormos:** Yes, exactly.

**Mr Chudleigh:** That was put in there as a point of clarification to ensure that it was very clear for OFA and to settle some of their concerns so that there was indeed a great deal of understanding about how people would enter on private properties, which of course is a very sensitive issue to all of agriculture in Ontario.

**Mr Kormos:** To any property owner, I think. But do you understand my argument?

**Mr Chudleigh:** I understand your argument. I don't necessarily accept it, but I do understand it.

**Mr Kormos:** I'm being more pro-private property than the Conservatives.

**Mr Chudleigh:** Yes. I wondered if this is the beginning of a conversion.

**Mr Kormos:** No, I've always felt that way. The left wing that I'm a member of believes very much in people owning what they've earned, as compared to what they've stolen from their non-unionized workers. You provoked that little bit of —

**Mr Chudleigh:** That's okay.

**Mr Kormos:** You are creating non-consensual, warrantless entries here and I know you understand that. You're saying it's only in the context of an investigation, as a follow-up to a permit application. I'm saying there should never be such a thing in our law anywhere of a warrantless, non-consensual entry other than in the case of emergencies. Whether I've applied for my plumbing permit or not, I still don't want the plumbing inspector to have a right to enter my home, my property — because you're not talking about buildings here; I appreciate that — without my consent or without a warrant, because it's my property. There you are.

**Mr Chudleigh:** I understand.

**Mr Kormos:** I think this creates confusion. I think it creates some ambiguity here. At some point, conservation officers are going to enter on to properties without consent and without a warrant, right? There is no provision for notice in the bill, as I understand it.

**Mr Chudleigh:** Subsection (19.2).

**Mr Kormos:** For the type of notice —

**Mr Chudleigh:** There is a notice requirement.

**Mr Kormos:** But there is none of the boiler plate stuff, the registered mail service. There's none of that stuff, right? All I'm saying is that some day a conservation officer is going to engage in a warrantless, non-consensual entry. He or she may well have given some form of notice but you're going to be plagued by the adequacy of the notice, not in the case of the inspector or officer merely



pursuing the physical location of the thing that's being done that requires the permit.

Let me tell you what's going to happen, Mr Chudleigh. You are going to have an officer enter on to private property without a warrant, non-consensual, and someday, somewhere, discover something that's a violation of the act. Since his or her purview wasn't restricted to the subject matter of the permit, they're going to raise all sorts of questions and arguments about admissibility etc — what do they call that, poisoned fruits or something? — because of the way it's worded.

1750

**Mrs Ross:** It was just brought to my attention that, on the government motion I just read into the record, there is a drafting error under (19.1)(a). At the end of that sentence where it reads, "by a regulation made under clause (1)(a), (b) or (c)," that (a) should not appear there because there is no request required under (1)(a). I would ask for unanimous consent that we remove (a) where it appears there.

**The Chair:** Is there unanimous consent from the committee?

**Mr Kormos:** One moment, please. I just want to take a look at this.

**Mr Chudleigh:** It refers to itself.

**Mrs Ross:** It's on page 163.

**Mr Kormos:** Clause 28(1)(a) — regulation having been approved by the minister. If I may, it's only clause (c) that talks about regulations, because clause (b), you notice, doesn't refer to regs only having been approved by the minister; perhaps pursuant to regulations, but it talks about mere approval by the minister, and that parallels the language in 8. I'm not sure, Mrs Ross, that that's what you want —

**Mrs Ross:** Can we get legislative counsel to clarify this?

**Mr Kormos:** I think we'd better.

**Mrs Ross:** I think so too.

**Mr Michael Wood:** I wonder if I could provide some information on this.

**The Chair:** Could you identify yourself for Hansard, please.

**Mr Michael Wood:** Michael Wood, legislative counsel. In the new subsection (19.1), in clause (a), as you know there is a reference to "clause (1)(a), (b) or (c)." Specifically, there is a reference to obtaining the permission that is required by a regulation made under clause (1)(a), (b) or (c). We then have to look back at subsection 28(1), clauses (a), (b) and (c) on page 163 of the bill. There is no reference in clause (a) to permission; there is a

reference in clauses (b) and (c) to permission. So the reference in the new clause (19.1)(a) back to (1)(a) doesn't accomplish anything.

**Mr Kormos:** I'm looking at the offence section, 28(1) of the original bill, not of schedule I. "Every person who" — am I there?

**Mr Michael Wood:** That's not what's referred to. Page 163 of the bill.

**Mr Kormos:** You're talking about 28 of the act?

**Mr Michael Wood:** Section 28 of the act as set out in schedule I of the bill, on page 163 of the bill.

**Mr Kormos:** Legislative counsel has been very helpful. I just don't want them writing laws. I appreciate their help, I just don't want them writing legislation. OK, you want unanimous consent to delete the letter (a).

**Mrs Ross:** That's correct.

**The Chair:** Is there unanimous consent? Agreed? Agreed.

**Mr Kormos:** Does that similarly apply to clause (b), which refers to (1)(a), (b) or (c)?

**Mr Michael Wood:** No, actually it does not because —

**Mr Kormos:** It refers to regulations rather than permissions.

**Mr Michael Wood:** That's right. In clause (b) the reference is to regulations and there is authority to make regulations under all those clauses of 28(1) of the bill.

**The Chair:** Further discussion on the motion?

**Mr Kormos:** Once again, I agree that the motion attempts to address the issue as raised by OFA. Unfortunately, I feel very strongly — not unfortunately that I feel strongly, but I feel very strongly — about the phenomenon of warrantless searches in the absence of emergencies. I'm therefore compelled to vote against the amendment but also, of course, to vote against schedule I, because I don't believe the amendment addresses that fundamental issue of property rights and warrantless searches. I appreciate the work done by staff in attempting to respond, but they know what my beef is with this particular amendment.

**Mr Crozier:** Just a comment. I have the luxury of being able to sit here and listen to the arguments and not be told how to vote, so I'll support Mr Kormos on this motion as well.

**The Chair:** Further discussion?

**Mr Kormos:** Recorded vote.

**The Chair:** Since there has been a recorded vote requested, the vote will be deferred.

Being that it's almost 6 of the clock, this committee will sit recessed until 1530 of the clock tomorrow.

*The committee adjourned at 1757.*











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## Assemblée législative de l'Ontario

Deuxième session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 27 October 1998

# Journal des débats (Hansard)

Mardi 27 octobre 1998

**Standing committee on  
administration of justice**

Red Tape Reduction Act, 1998

**Comité permanent de  
l'administration de la justice**

Loi de 1998 visant à réduire  
les formalités administratives



Chair: Jerry J. Ouellette  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Tuesday 27 October 1998

Mardi 27 octobre 1998

*The committee met at 1534 in room 228.*

## RED TAPE REDUCTION ACT, 1998

LOI DE 1998 VISANT À RÉDUIRE  
LES FORMALITÉS ADMINISTRATIVES

Consideration of Bill 25, An Act to reduce red tape by amending or repealing certain Acts and by enacting two new Acts / Projet de loi 25, Loi visant à réduire les formalités administratives en modifiant ou abrogeant certaines lois et en édictant deux nouvelles lois.

**The Chair (Mr Jerry J. Ouellette):** I call this committee to order as we continue on the clause-by-clause consideration of Bill 25. I ask the government members, as we indicated yesterday, to proceed with page 11.

**Mrs Lillian Ross (Hamilton West):** I move that subsection 28(20) of the Conservation Authorities Act, as set out in section 12 of schedule I to the bill, be amended by,

(a) amending the definition of "development" by striking out "units" in the sixth line of clause (b) and substituting "dwelling units"; and

(b) striking out the definition of "wetland" and substituting the following:

"'wetland' means land that,

"(a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface,

"(b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse,

"(c) has hydric soils, the formation of which has been caused by the presence of abundant water, and

"(d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water,

"but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause (c) or (d). ('terre marécageuse')"

**Mr Ted Chudleigh (Halton North):** The clarification on this amendment is that for "dwelling units" we added the word "dwelling" to make sure there was a clarification of public safety involved in that. In the wetlands issue, it was to draw the definition of wetlands in and make it consistent with the provincial policy statement. Both of those were I think at the request of the Ontario Federation

of Agriculture, and they've reviewed that and are satisfied.

**The Chair:** Further discussion? Seeing no further discussion, I will call the vote on the motion as presented. All those in favour? Opposed? The motion is carried.

We now move to committee motion 12.

**Mrs Ross:** I move that section 30.1 of the Conservation Authorities Act, as set out in section 14 of schedule I to the bill, be struck out and the following substituted:

"Restriction on entry

"30.1(1) An authority or an officer appointed under a regulation made under clause 28(1)(d) or (e) shall not enter land without,

"(a) the consent of the owner of the land and, if the occupier of the land is not the owner, the consent of the occupier of the land; or

"(b) the authority of a warrant under the Provincial Offences Act.

"Exceptions

"(2) Subsection (1) does not apply to entry under clause 21(1)(b) or subsection 28(19.1)."

**Mr Peter Kormos (Welland-Thorold):** I understand that the intention here was canvassed when we talked about the earlier amendments that purport to address the issues raised by the OFA and a property rights group that appeared here. Once again, I adamantly oppose this because the exception subsection, subsection (2), basically provides for warrantless searches. As we discussed yesterday, I find that unacceptable. It would be so easy to simply eliminate subsection (2) and it would be, in my view, a perfectly legitimate process. As it stands, it isn't, and I'm going to be voting against it and asking for a recorded vote.

**The Chair:** Further discussion? Seeing no further discussion and as a recorded vote has been requested, this shall be deferred.

We move to page 13.

**Mrs Ross:** I move that the definition of "woodland" in subsection 1(1) of the Forestry Act, as set out in section 20 of schedule I to the bill, be amended by striking out the portion after clause (d) and substituting the following:

"but does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees."



1540

**Mr Kormos:** Would the PA please explain the rationale for that? I think I understand the rationale, but I'd like to have her or one of the members put it on the record, please.

**Mr Chudleigh:** This was a concern expressed by the Ontario Federation of Agriculture that nut orchards such as walnut trees that were used in the production of walnuts may fall under the Forestry Act and be subject to those conditions, particularly when it revolved around decisions made by the conservation authority, I believe. This amendment was instituted to clarify that and remove any concerns they might have, including Christmas tree production.

**Mr Kormos:** I might ask why it was restricted to Christmas trees. Some people may say that sounds silly, but you know that down where I come from, as well as where you come from, there's tree farming. I understand the argument. Christmas trees would clearly fall in that category, but people also plant and grow, to various stages of maturity, huge plots of all sorts of other kinds of trees.

**Mr Chudleigh:** Ornamentals.

**Mr Kormos:** Is it the intention that they be included in the exclusion?

**Mr Chudleigh:** In the regulations and in the applications they are excluded, as were nut groves and Christmas trees. The Ontario Federation of Agriculture brought those two issues to us, and that's why it was done in this manner.

**The Chair:** Further discussion? Seeing no further discussion, I shall put the question. All those in favour of the motion presented? All those opposed? The motion is carried.

We now move to 14. Mr Kormos.

**Mr Kormos:** We're not at that point yet.

**The Chair:** Sorry. We shall move to schedule J. Discussion on schedule J?

**Mr Kormos:** What you've done is given me three 20-minute segments by doing that, because we could speak first to schedule J and then once to the first section and once to the second section, right?

**The Chair:** However, at 4:30 —

**Mr Kormos:** At 4:30 you've got to call the question, and here we are at 20 to 4.

Look, I raised this when we first met to begin considering this bill. I really am concerned that government members don't understand the significance of this mere two-section act. It's the repeal of the Policy and Priorities Board of Cabinet Act. That, I tell you, has strong and significant ramifications, and I can't for the life of me understand why these Conservative government members on the committee are not using their authority here to at least stall that, because I don't think the ramifications of the repeal of that act have been canvassed by the caucus in the Conservative government or even, probably, in a meaningful way by most of cabinet.

I don't know if you people know it or not, but the history of the P and P committee — and I'll call it that, the P and P board of cabinet — goes back to what was called

the Cronyn report. The Cronyn report was done in the course of 1970-71, commissioned by the then government. I believe it began its work when John Robarts was still Premier and then carried on into the Davis years. I'm not entirely sure, but it's through 1970-71.

The Cronyn report made several recommendations. There were 10 volumes published in what was called colloquially the Cronyn report, because he led the team that was commissioned by the government to do a thorough investigation of updating how government does business and making the process more in tune with the increasing demands upon government and upon cabinet and cabinet ministers; and also an effort, in my view, having read the Cronyn report, which is lengthy, but not a difficult read, to in effect democratize the process, because when you read between the lines in the Cronyn report — the report resulted in the creation, for instance, of Management Board. That was another one of Cronyn's recommendations. But another strong recommendation was the creation of a P and P board of cabinet. As I indicated the first time we met, P and P is what creates the connection between caucus/cabinet and the Premier's office.

Have any of you read the existing legislation? Have any of you read that? It passed in December 1971, as I recall, and they had first, second and third reading over the course of two or three days. It was December 14, 15 and 16, 1971. There was all-party support for the proposition. When it was introduced on first reading, as I recall my reading of the Hansard, Mr Davis introduced it and indicated that it was the result of the Cronyn commission.

This is incredibly important, and once again I'm saying this in an entirely non-partisan way. This committee today has the power to say no to the repeal of the Policy and Priorities Board of Cabinet Act, the act that creates it, makes it a creature of statute — incredibly dangerous. The P and P act is very simple. It simply indicates that cabinet shall have this policy and priorities board — I'm referring to the act now, the published version of the act — "not fewer than five and not more than six...members of the executive council," so we're talking about the cabinet. "The Premier is the chair" of P and P. When I talk about P and P being incredibly important, it's the nexus between cabinet/caucus and the Premier's office.

I don't have to tell you people that if something's going to happen, and this has been increasingly the case, it happens because the Premier's office says it's going to happen. At the end of the day, that's the bottom line, that's the story, that's as good as it gets and it ain't going to get any better. I'm not blaming you — over the course of the last 13 years, we've seen increased centralization of power in the Premier's office. We've seen it happen concurrently over the course of the last 30 years in Ottawa, and you've read any number of books or analyses done of that increasing concentration of power in the Prime Minister's Office, the PMO, and the growth of staff at the same time in those offices acknowledged.

But you folks know that something doesn't happen unless the Premier's office says it's going to happen. If the

Premier's office is not brought up to speed on it — need I go any further than the cheque that was presented to Mount Sinai Hospital last week. We know what happened — nobody's telling stories out of school — between Management Board and the interplay between various ministers and the competitiveness. What happened over those emergency room fundings, I tell you, is as much an illustration of the abandonment of the utilization of P and P as anything ever could be. You see, if P and P, as policy and priorities board of cabinet, had been utilized to approve that funding, with the Premier sitting as Chair, that means it happens, Management Board or not. That means it gets put to the top of the list of Management Board.

Let me give you, according to the statute, the duties of the board. I'm talking about section 3 of the act. This is the act that you people, by schedule J, are going to repeal.

"The board shall be the committee of the executive council which shall develop, review, coordinate and advise on policy and priorities relating to,

"(a) the overall long-term and short-term goals of governmental activity in relation to the social and economic needs of the province of Ontario;

"(b) the general outline of budgetary and fiscal policy and of levels of taxation and priorities among expenditure programs in accordance with the goals;" — do you understand why I'm saying how P and P would have been relevant in the fiasco, and it was a fiasco, over the flow of monies to emergency rooms?

"(c) recommendations submitted by policy field committees;

"(d) program proposals and other matters referred to the board;

"(e) the periodic reappraisal of existing programs; and

"(f) intergovernmental relations."

1550

I don't know how to put it any way other than this, but I think you're being conned. I think you're being taken for a ride here. I'll tell you why. One of the roles is the periodic reappraisal of existing programs. That, to me, seems like an exemplary and appropriate role for this type of committee. The repeal of the legislation means there won't be a committee to conduct that role.

As I suggested to you the first day of these hearings, what this does is confirm what has been a suspicion that has grown into an increasingly documented phenomenon of the sources of policy for government — and in this case, this government — increasingly coming from outside of elected officials and even outside of ministries, because ministries, through the DMs and through the structure, have access to P and P as well, because P and P has its own staff.

I want to read you some of the rationale in the Cronyn report. I'll do these in chronological order. This is from the Interim Report Number One, dated December 15, 1970. They talk about a new management style. Go through the list of people involved, set up when John Robarts was still a Premier: J.B. Cronyn was the director and executive VP of John Labatt Ltd; C.C. Hay, the

director of Gulf Oil and president of Hockey Canada; G.R. Heffernan, president and general manager of Lake Ontario Steel Company; A. Powis, president of Noranda Mines Ltd; R.D. Wolfe, president of Oshawa Wholesale Ltd; Dr J.D. Fleck, associate dean of the faculty of administrative studies at York University; and then a number of — there's Deputy Minister Bayly; the secretary of treasury board; the deputy minister of justice; the deputy treasurer of Ontario; and the secretary to the cabinet. Those are the people who constituted this commission headed by Cronyn.

You folks talk about wanting to do things in a businesslike manner. That's exactly what the Cronyn commission was doing. They were talking about how to develop a system, a process, that was more efficient and more businesslike and where you didn't have brick walls. You folks know as well as anybody does what has happened to some of your proposals that you've made in caucus, or, if you've managed to snag a minister in the lounge outside of the Legislature, to a proposal you've talked to a minister about. These things disappear into orbit. They disappear into ministerial and bureaucratic orbit. They disappear into the black holes that governments are capable of creating. One of your few recourses in terms of generating and/or pushing policy is to have things like a P and P board of cabinet that has the actual power to analyze and establish priorities and goals.

Let me refer to the first volume. As I say, that was back in December 1970. Here the Cronyn report says — I'll refer to it as the P and P committee:

"The [P and P] committee would have two major responsibilities. The first would be to advise the cabinet on overall government priorities. To accomplish this task, the committee would evaluate all major policy proposals coming from departments, task forces and cabinet committees. The evaluation of proposals would be in terms of their relative importance, their consistency with existing programs, and their financial and administrative implications. In addition to new program proposals, the committee would initiate re-evaluations of selected on-going programs to advise cabinet on their degree of continuing importance relative to the public need and available government resources. The second major responsibility," and this is incredibly important, "would be to identify and initiate policy analyses on those issues which are not presently being examined by any department or agency."

Do you understand why I emphasize that second role, Chair? Do you understand me when I raise that? That's what I'm talking about. "The second major responsibility would be to identify and initiate policy analyses on those issues which are not presently being examined by any department or agency." If there is any semblance of democracy left in the process, it's that second role of P and P board of cabinet that gives you or you or you or any one of your caucus colleagues the chance to lobby one of the members of that board and say, "Get this on the agenda," because it's one of your two major roles, one of your two major functions, to entertain something that may



never have been considered within a ministry bureaucracy or within the external sources of policy that the government utilizes.

I'll move on. There are only two more paragraphs in this brief section. This is the Cronyn report, page 7. I'm reading now from Interim Report Number Two, March 16, 1971.

"To deal with these ongoing responsibilities effectively, the committee would need to develop a long-term strategy of where the government is going and why. Such a strategy would be based on the continuing evaluation of the longer-term needs of the people of Ontario, the desired role of the government" — the desired role of the government. I understand that governments are political — "and its financial capabilities in the years ahead."

That was the genesis of P and P. That was the genesis of this legislation that you people are going to repeal today if you don't show some independence and say no because there's something nagging — there's a question that should be nagging you about what motivates the government to include schedule J, because it has nothing to do with red tape. It has to do with process and access by you and others like you, as backbenchers, to the process and your ability or opportunity to raise issues.

As I say, that was Interim Report Number Two. In Interim Report Number Three, December 1971, reading specifically on page 16, it talks about policy ministers.

"As members of the [P and P] board of cabinet, policy ministers would assume a leadership role in initiating, developing, assessing and modifying new policies and programs." This next sentence is very important. "It would also be part of their function to attempt to anticipate emerging issues within their policy field...."

"The policy minister would have considerable influence in the policy-making process. This influence" — please, if Hansard would underscore this — "This influence would stem from his [or her] membership on the policy and priorities board...."

Do you understand, once again — and I underscore that line — why I'm emphasizing and why I'm referring to the origins of this board, the effect of the schedule J being to repeal it?

In Report Number Ten, which is the final report submitted by Cronyn — it was their wrap-up report, dated March 1973. In 1971 the government had already passed the first P and P board act. This is the act you want to repeal today. The Cronyn commission had talked in its report — listen. This should be of interest to each and every one of you. The language here is 25 years old, but it's language that we've heard some of your leadership attempt to use.

"The establishment of a Policy and Priorities Board of Cabinet: Since most major sources of revenues have been tapped, the emphasis must shift in the years ahead from finding new sources to making the best uses of existing ones."

That should resonate with some of you, shouldn't it? Please, Ms Ross. That was the rationale for the P and P board, that committee in cabinet, to create the efficiencies,

to best utilize the personalities and to reorganize — because remember, among other things, "the periodic reappraisal of existing programs" and the overview of programs vis-à-vis "the general outline of budgetary and fiscal policy and of levels of taxation and priorities among expenditure programs." That's the purpose of the board, and that's the act as it exists today. That's the mandate of that committee, that P and P board of cabinet, and that's what you want to repeal.

1600

The Cronyn report in volume 10, in their 10th report, reading from pages 8 and 9:

"To accomplish this, the establishment of an improved priority-setting process was recommended in Interim Report Number Two." Remember, that's the first one I read from; I told you that was the genesis of P and P. "At the centre of this process would be a senior cabinet committee called the policy and priorities board, having two major responsibilities." Please, my friends, listen carefully.

"The first would be to advise the cabinet on overall government priorities. To accomplish this task, the board evaluates all major proposals coming from ministries, task forces, and cabinet committees. In addition to new program proposals, the board initiates re-evaluations of selected ongoing programs in order to advise cabinet on the degree of their continuing importance relative to the public need and available government resources." I emphasize once again, "and available government resources."

"The second major responsibility of the board would be to identify and initiate policy analysis on those issues which were not being examined currently by any ministry or agency."

Once again, do you understand how important that is to you as backbenchers? Without a P and P committee of cabinet, you have no access, no input. You haven't got a snowball's chance in hell of being part of initiating some policy development. Sure, you can talk till you're blue in the face, but you know it ain't gonna go nowhere. It's going to disappear into what I call that ministerial orbit, into the black holes that Premiers' offices are. Look, I'm telling you, been there, done that, I know what I'm talking about. It'll disappear into those black holes.

I repeat this again. I've only got one minute, but I'll have more chances to speak as we approach this on clause-by-clause. I repeat, "The second major responsibility of the board would be to identify and initiate policy analysis on those issues which were not being examined currently by any ministry or agency."

Do you understand how important that is and how that process won't be a process, won't happen if you repeal the P and P committee legislation? You've killed — you're being duped, you're being used to kill one of the most effective links in the chain, or at least the most important link in the chain. I called it the nexus. Talk to some people here with some lengthier history. Talk to some of the Liberals, some of the New Democrats; talk to members who have retired from here but who had experience,

hopefully, with government before P and P and after P and P in 1971 and understand.

I understand my time is up, but I'll have a chance to speak when we deal with clause-by-clause, Chair.

**The Chair:** Further discussion?

**Mrs Ross:** My understanding — and the member talked about it — is that P and P was recommended as a board of cabinet. But it never did specify that it be established by legislation. As a matter of fact, legislation is not necessary to create policy and priorities board of cabinet. Cabinet can create whatever committees they want to create. Policy and priorities is a very important part of cabinet, and this doesn't eliminate the policy and priorities board. It eliminates the legislation because the legislation isn't necessary. Cabinet should be allowed some flexibility to organize committees that they feel would address needs as government sees fit. They should be able to determine what priorities they want to address and how to organize those committees. It shouldn't be up to the Legislature to determine how cabinet's going to operate. It doesn't eliminate policy and priorities, it only eliminates the legislation. Policy and priorities will still be there. It still will continue to function as a valuable cabinet committee.

That's the reasoning behind it.

**The Chair:** Thank you, Ms Ross. Mr Kormos.

**Mr Kormos:** OK. I'll speak to section 1 now.

**The Chair:** Section 1?

**Mr Kormos:** It's a two-section act —

**The Chair:** Well, we're dealing with schedule J right now.

**Mr Kormos:** Quite right, and I want to speak to section 1.

**The Chair:** Of schedule J?

**Mr Kormos:** Yes. This is clause-by-clause, Chair. We're on schedule J, and there are two sections in schedule J. Now I want to speak to section 1, because this is clause-by-clause and that's how clause-by-clause progresses.

**The Chair:** Yes, you may, Mr Kormos.

**Mr Kormos:** Thank you, Chair. We'll start the clock again. Ms Ross, look, I hear what you're saying, and I quite frankly anticipated that. What would the rationale be for eliminating the legislation? The legislation ensures — you're right. The cabinet can have any kind of committee structure it wants. But this is legislation that guarantees that at the very least, there will be a P and P committee. It's not something that occurred frivolously. Again, have you read the 10 reports of the Cronyn commission? I have.

*Interjection.*

**Mr Kormos:** No, I have, Ms Ross. I'm telling you. I read you the names of the people on that commission, the Cronyn-led commission. You're talking about the corporate leaders of this country of their day. We're not talking back in the 1920s; we're talking well within our lifetimes, the early 1970s, when there was a major transformation. Government had grown — look, you folks should know that the Premier's office this year has spent \$900,000 more than any single year of the last government. When you look at eliminating legislation establishing the P and P

committee and you realize that the Premier's office is spending more, you wonder if they're achieving more. If they're achieving anything, are they doing it with any input from government members?

I understand that as an opposition member my job is, in many respects, different from yours. I understand that. When some of you are in the opposition, you'll understand. I was fortunate, because I was here in opposition, then government, then back in opposition. I'll be quite candid with you: Some of our members who were elected directly to government endured some culture shock, if you will, being in opposition. They didn't understand the opposition culture. I think all of our members have done quite well, quite frankly, in adapting. They seem to have adapted well. So I appreciate that my role is not identical to yours. As I say, when some of you are in opposition, you will understand that. And I wish you well, I really do.

As government members, understand. You're being asked to repeal the bill. The argument that cabinet should have a right to form — it does have the right to form whatever committees it wants, right? In fact, what happens is that the Premier decides what committees will be formed. At the end of the day, Mike calls the shots. That's the way it works. I understand that.

**Mr E.J. Douglas Rollins (Quinte):** It's always been that way.

**Mr Kormos:** Exactly, Mr Rollins. I understand that. Do you want to abandon the one legislated body — because the legislation guarantees you that it'll be there, doesn't it? You're assured, then: the one legislated body. You know, \$900,000 more this year by the Premier's office than any year in the history of the last government, and I bet you that would hold true for previous governments, because over the course of the years, governments have increasingly spent more and Premier's offices have spent more. I'm prepared to say that.

Your argument doesn't hold water. How does eliminating the statute eliminate red tape? How does eliminating the statute eliminate any costs or make things work more efficiently? Eliminating this statute makes this operation even less democratic. Other than Toni Skarica, whom I knew as a crown attorney and for whom I had the highest regard as a crown and a lawyer — a tough crown, but I enjoyed working with him — I don't think there's a single member of your caucus whom I knew before you got elected, but I'll venture to say this: The vast majority of you, the ones who really were interested — granted, when you have sweeps, I don't care if it's a Liberal sweep, an NDP sweep or a Tory sweep, you get people elected who have no business being in the Legislature. I have no hesitation in telling you that. You really do. In a sweep, people get elected who have no business being here. Mind you, it usually all comes out in the wash, because come next round, they're gone.

Mr Colle is here. That happened. I saw it in the Liberal government of 1987, I saw it in the NDP government — I was critical of some of those same people at the time — and I see it now in this government. But look, the people



who are here — you, Ms Ross. I sit beside you in the Legislature, and I've come to like you.

*Interjection.*

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**Mr Kormos:** Well, I have. I've come to like you. What I can read — this is what I'm prepared to speculate. I think you thought you could make a difference. I really believe that. When you were elected back in the summer of 1995, I believe you were as enthusiastic and sincere as anybody could be and you thought, "By God, I'm going to go to Queen's Park and I'm going to kick some tail." Now, you may not have put it that way.

But I also know this: that in short order, you went, "Holy zonkers, this isn't the way I thought it was going to be." You're a parliamentary assistant, and you thought you were going to be able to sit around and engage in polemics with your colleagues and be specifically involved in developing policy. You've tried it, I'm sure you've tried it any number of times, but you either got shushed up or shooed away or you got the not-so-subtle message, "Mind your P's and Q's, because after all, there are other people who want to be parliamentary assistants too." I don't begrudge you the extra income, the 11 or 12 grand a year, but there are other people in your caucus who aren't parliamentary assistants —

**Mr Mike Colle (Oakwood):** Bill Murdoch.

**Mr Kormos:** Look, I'm not trying to be on the attack here — who would take your job in a New York minute. As a matter of fact, you know what happens. Let me tell you what happens in cabinet.

You've got backbenchers who are hoping and praying for a cabinet minister to stumble and fall. You do. You've got backbenchers who are dreaming of any number of cabinet ministers fouling up big time, because they know that then, they're getting a little farther up in the line in terms of entry into cabinet. I'm not telling stories out of school. I know exactly what's going on. They're champing at the bit. They look at the papers in the morning to see who got caught with what or whom, in what circumstances. Oh, of course publicly they have to do the sorrowful face.

All I'm trying to tell you is that this place isn't what you thought it was going to be. You could respond to me and say: "It's not true. We have a very democratic caucus. All of us are heard equally, and when we raise things at caucus meetings the Premier makes notes and he listens, and we have access to ministers etc, etc."

Some of your backbenchers have been at events with ministers and their names haven't even been mentioned when the minister speaks. You know how I know that? I've been with them. I've been with them when some of your ministers have been out in the public with the Tory member from the area. I understand that the minister isn't going to say, "Oh, here's Peter Kormos, the maverick rebel MPP from Welland." I'd understand why a Tory minister wouldn't do that, although some have. But I've seen cabinet ministers not even mention the member who is in that riding. That's how backbenchers get treated.

Why do I raise that? I raise it because we should be honest about this. As I say, you could respond with the whole flashy line about how it ain't so, but you wouldn't be telling the truth, Ms Ross, and I know you're not a liar. If you were to respond that way, you wouldn't be telling the truth, and I know you're not a liar. I know you'd rather remain silent on the issue than lie.

You've got a chance today. You know what? If you vote against this schedule, you might lose your PA job. I'm telling you that right now. As a matter of fact, I'm not just telling you, I'm guaranteeing it. I'm serious. You will lose your PA job.

I saw it happen. I saw it happen during the Bill 84 hearings when we were dealing with firefighters. When the then PA was starting to show some sympathy for the issues around firefighters and for their arguments, that PA was gone, out of here, history.

OK. You might lose your job as parliamentary assistant, so you'll lose that 11 or 12 grand a year. You'll still make 78 Gs a year, which is far more than most working people in this province make.

One of the things that surprises me about this operation — in speeches, I used to dispel the myth, and I still do from time to time, of brown envelopes of money changing hands here, you know, the image people have? I assure people, when I speak across the province, that that doesn't happen. The only reason it doesn't happen is because you don't have to. Most politicians, you scratch them behind the ears and they'll follow you home. A cheese tray and a couple of bottles of Ontario wine will do it. That's the only reason there aren't brown envelopes of money. They don't have to.

What bothers me, Ms Ross, is not that people — I used to be a defence lawyer. You know that. I've acted for bank robbers. I've understood why somebody would try to rob a bank: There's a lot of money. I don't approve of it. It's illegal and it's immoral and it's wrong, but I understand why somebody would want to rob a bank.

**Mr Gilles Pouliot (Lake Nipigon):** That's where the money is.

**Mr Kormos:** That's right, that's where the money is. There's high risk, but there's a potential for a high take.

What I've never been able to understand is somebody who would steal \$5. I'm not talking about a hungry person who needs the five bucks to buy food. You know the kind of people I'm talking about, where you leave \$5 on your kitchen table, and later that day — you've had people over — you see the \$5 is gone. You're not really sure who took it, but you're awfully disappointed, aren't you? I don't know whether that specifically happened, but I'm sure something akin to that has happened to you. I understand why, if I left \$10,000 there, any person in hard times would be tempted, but why would somebody compromise their integrity for a mere five bucks?

I'm not saying 11 or 12 grand is small change, but here's your chance. At the end of the day, you're living down there in the Stoney Creek-Hamilton area, and you've still got to look at yourself in the mirror in the morning and you've still got to take your garbage out to

the curb like all of us do and say hi to your neighbours. Here's your chance to be what you promised yourself you were going to be when you got elected. You did. I know that as much as I know anything, that you, of all people, promised you weren't going to be like the rest. In boxing terms — remember, we were talking yesterday about boxers, amateur boxing and some of the kids down in Niagara — you're not going to take a dive, you're not going to bite the canvas, you're not going to throw a fight for \$12,000 a year. You're not going to do it for 12 grand a year.

You're going to get fired as a parliamentary assistant if you vote against this section. You will. There's no secret about that. You tell me what's more important. Is that \$12,000 a year more important to you than your integrity? If it is, you're not the person I thought you were. If that 12 grand a year is more important than your integrity, you're not the person I've come to like sitting beside me in the Legislature and for whom I've come to have some regard.

**Mr Pouliot:** Mr Chair, on a point of order: I don't wish to disturb the flow of my colleague, but surely — I see Ms Ross, and I can see remorse and I can see pain. This is not an inquisition, is it?

**The Chair:** Your point of order?

**Mr Pouliot:** I know my friend's sincerity. You can see the perspiration. He wanted to establish the nuance, to inform us as to the power of P and P and its relationship. Are we to lose equilibrium with the Premier's office? He did mention through estimates that \$900,000 had flowed in this direction. Will this \$900,000 —

**The Chair:** And your point of order is?

**Mr Pouliot:** I'm trying to get him back on track. I'm trying to be humanitarian, with high respect. I do not wish you. Mrs Ross, to leave here and to leave part of yourself when you do so. I understand what you're going through. It's a matter of honesty, "Shall I do the right thing?" or "Do I need a few dineros, a few more dollars more?"

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**The Chair:** Thank you, Mr Pouliot. I will certainly bring Mr Kormos to the debate upon the floor.

**Mr Kormos:** Thank you very kindly. I appreciate your direction.

You know, Ms Ross, that your argument defending schedule J is pretty evil. You and I and the members of this committee have had some serious disagreements about other sections of the bill. I understand that there are some ideological differences as well. OK? Those I understand. This is not about ideology. You and your colleagues are part today of an exercise that will destroy the P and P committee. If you vote this down, the government can restore it by way of a bill — there's no quarrel with that — and maybe present some clearer arguments.

The problem with omnibus bills like that is that not too many of your colleagues read all the way to the final page. And when they did read repeal of the P and P committee act, very few of them went to the statutes and saw what the P and P committee act was about. I bet you none did — none. None read the Cronyn report to understand why the Conservative government of the early 1970s would

enact this legislation — none, not one. Is that how we're supposed to do business here?

I'm not criticizing the members. They're busy. I understand that. You have a load of responsibilities. And this legislation really isn't even in your bailiwick as a PA to consumer and commercial relations. I suppose more properly it's, what, AG? I don't know. It's a strange one. Intergovernmental affairs? I have no idea where the most appropriate — the PA to the Premier: Who's that now? Is that —

**Mrs Ross:** Mrs Mushinski.

**Mr Kormos:** Mushinski? You had a hard time remembering. Ms Mushinski should be here answering the questions, shouldn't she? Shouldn't she, Ms Ross?

*Interjection.*

**Mr Kormos:** She's the PA to the Premier, and it's only by the Premier's design — you see, eliminating this act has nothing to do with the elimination of red tape. I bet you dollars to doughnuts right here and now that that commission did not sit down and — we already canvassed the fact that that little Red Tape Commission did not read all these bills. OK? They didn't. I know some of the members of that so-called commission, and I know they didn't read all of the bills and decide which ones were red tapey bills, which ones weren't. They were fed this stuff, either by ministries — we went through that yesterday when we explained how the Red Tape Commission got all this stuff. Various ministries canvassed their legislation that was going to be dealt with by that decennial process, in the ninth year of every decade, of creating the RSOs.

This was sneaked in here. Somebody wants the P and P committee destroyed. Somebody doesn't want the P and P committee to function any more. Who? Not the members of P and P. Not the caucus. I'll venture this: Your caucus was never presented, during a caucus meeting, with a proposition that the P and P was going to be eliminated. I'll put my money right on the table that your caucus was not advised that this government had a plan to eliminate P and P. It was stuffed in here as the very last part of this bill, with the proper anticipation that nobody was going to get that far when they read the bill; and that if they did, they weren't going to look up the act that was being repealed; and that if they did, they weren't going to read the origins of the act by virtue of the Cronyn commission's report.

Think about this, please, and consider this proposition. You can vote this down today, which means it gives you a chance to ask some of the questions that I think, in all fairness, you might want to ask of any number of people about the rationalization for eliminating P and P. I know you're not going to be satisfied with the argument, "Oh, cabinet can have any kind of committee structure it wants." I know you won't be satisfied with that kind of response, I know that, and you shouldn't be. I've been a government backbencher and I know what it's like to be fed the pap on a daily basis, the old: "Trust me. Just follow me and we're going to do OK."

I'm suggesting to you, Ms Ross, that you're doing something very critical here. It's something that will have



long-term impact through the course of your government and successive governments. I'm saying we can vote this down today, and if your government is really adamant about it, they can bring it back by way of a bill — it will be a two-section bill — and they can use time allocation and ram 'er through.

We're only dealing with section 1; we're going to move on to section 2 in a minute. Please, consider doing the right thing.

**The Chair:** Thank you, Mr Kormos. Further debate?

**Mrs Ross:** I feel I must comment after all that.

The member did say I came here to make a difference. I think he would agree that as member of this government I have made a difference and that the province has certainly seen a difference, and a good difference, I think, as we turn the province around. He's right, it isn't quite what I thought it would be, but I'm pretty proud of the work this government is doing.

Part of the Red Tape Commission's mandate was to eliminate unnecessary legislation, and this is a piece of unnecessary legislation, because cabinet does not require legislation to form any committees. Cabinet should have the flexibility to organize the committees as they wish, and that's why the government is in favour of schedule J.

**Mr Pouliot:** Mr Kormos spoke at some length, trying to convey a sense of what was happening here. Sometimes you — not you, but "you" collectively — because of busy schedules, people resent the time they spend reading bills, unless it's the pension bill, because that is much easier reading. Maybe the parallel has some semblance of validity: It resembles a stipend, the \$12,000 that we throw in the balance, and it makes the job more pleasant, more interesting.

Under the previous administration, my friend and colleague Mr Kormos and I had the opportunity to serve the province in a different capacity. I had the chance to occupy four ministries and Mr Kormos one, but he did run out of time. When I first came here 14 years ago, I said, "If only we could be a member of Her Majesty's loyal opposition, we would perhaps be positioned to be an alternative." And we achieved this. Then I said, "Perhaps if we were fortunate and formed the government, we would be the decision maker," and again we achieved that. And then we waited for the call, where the Premier would call and offer you the opportunity to be in cabinet. By a stroke of good fortune, we reached there too, n'est-ce pas, Peter? We said, "Now we can really have an influence."

If you could be a member of P and P, then you would really have the Premier's ear. You would have arrived. You would have about you a distinctive walk. You would have to be more prolific and more selective in your reading because you have become a person of authority. You are now consequential.

If you do that, then you say, "If only, one day, I could be a member of the Premier's office." If you go to a political science class, there would be a test: "What are the duties? Define what P and P does, and the Premier's office."

Our system is one of checks, as you know, one of balance, one of a constant search for equilibrium, and it's not constant. One, at times, facilitates the others. It's a liaison. One will do less well without the others. It's constantly shifting, but what we've seen over the years — and this is the appeal we make — is that we feel this is not very much that. We used to say *plus ça change, plus ç'est la même chose*. It was a semblant, it was different stripes, a bit different ideology, a different approach, a different perception.

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But now you see this big, bold move that takes away from the legislators. You are there to make the decisions and you are also there to guarantee that it's the right process. You're not only there to legislate, to process what somebody else tells you to process. This is what the erosion is. This is what is being taken away, a little bit here, a little bit there. It's OK when you read the title. It says it's because of red tape, which means blame, blame, blame. That's not what it's all about. It's about us. It's about the reason we are elected. It's about serving the public, representing them, not leaving it to others.

**The Chair:** Thank you very much. That takes us up to about 20 seconds to the 4:30 mark.

**Mr Kormos:** Again, I'll be asking for a recorded vote on schedule J, please, Chair.

**The Chair:** OK. Seeing as it's not quite 4:30 yet, according to the various clocks around here, a recorded vote has been asked for on schedule J. It shall be deferred.

At this time, we'll be moving into the deferred votes.

On section 1, shall Mr Kormos's motion to amend subsection 1(2) of the bill carry?

**Ayes**

Crozier, Kormos.

**Nays**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**The Chair:** The motion is defeated.

Shall section 1 carry? All those in favour? Those opposed? The section is carried.

Shall section 2 carry?

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** Section 2 is carried.

On section 3, there's a recorded vote as well. Shall section 3 carry?

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** Section 3 carries.

On schedule A, there's a recorded vote again. Shall schedule A carry?

**Ayes**

Boushy, Chudleigh, Crozier, Rollins, Ross, Bob Wood.

**Nays**

Kormos.

**The Chair:** Schedule A carries.

Shall section 1 of schedule C carry?

**Mr Kormos:** Excuse me, Chair, shouldn't we be dealing with schedule B?

**The Chair:** It was carried during the last vote. There was a number of them where a vote did go through.

**Mr Kormos:** OK.

**The Chair:** To return to schedule C, shall section 1 of schedule C carry? It's not a recorded vote. All those in favour? All those opposed? Schedule C is carried.

A recorded vote: Shall Mr Kormos's motion to amend schedule C, clause 2(1)(c) of the Statute and Regulation Revision Act, 1998, carry?

**Ayes**

Crozier, Kormos.

**Nays**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**The Chair:** I declare the motion defeated.

A recorded vote again: Shall Mr Kormos's motion to amend schedule C, subsection 2(2.1) of the Statute and Regulation Revision Act, 1998, carry?

**Ayes**

Crozier, Kormos.

**Nays**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**The Chair:** I declare the motion defeated.

Shall section 2 of schedule C carry? All those in favour? All those opposed? I declare section 2 of schedule C carried.

A recorded vote: Shall Mr Kormos's motion to amend schedule C, section 3, of the Statute and Regulation Revision Act, 1998, carry?

**Ayes**

Crozier, Kormos.

**Nays**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**The Chair:** I declare the motion defeated.

Shall section 3 of schedule C carry? All those in favour? All those opposed? I declare section 3 of schedule C carried.

A recorded vote: Shall Mr Kormos's motion to amend schedule C, section 4, of the Statute and Regulation Revision Act, 1998, carry?

**Ayes**

Crozier, Kormos.

**Nays**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**The Chair:** I declare the motion defeated.

Shall section 4 of schedule C carry? All those in favour? All those opposed? I declare section 4 of schedule C carried.

A recorded vote: Shall section 5 of schedule C carry?

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare section 5 of schedule C carried.

**Mr Kormos:** On a point of order, Chair: There are no amendments to any further sections of schedule C, as I'm aware of it. I would be pleased, there being no other amendments, if the Chair would put to the committee, "Shall schedule C carry?"

**The Chair:** We only have two questions remaining on this, so I'll just do those. Shall sections 6 to 12, inclusive, of schedule C carry?

**Mr Kormos:** A recorded vote, please.

**The Chair:** It was not requested at the time.

**Mr Kormos:** It wasn't requested at the time because it wasn't moved at the time. This is the first time you've moved it.

**The Chair:** Yes, you may request it.

**Mr Kormos:** Thank you, sir.

**The Chair:** A recorded vote.

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.



**Nays**

Crozier, Kormos.

**The Chair:** I declare sections 6 to 12, inclusive, of schedule C carried.

Shall schedule C carry?

**Mr Kormos:** A recorded vote, please.

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare schedule C carried.

On schedule E, a recorded vote: Shall schedule E carry?

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

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**The Chair:** I declare schedule E carried.

Shall sections 1 through 14 of schedule G carry? All those in favour? Opposed? I declare sections 1 through 14 of schedule G carried.

A recorded vote: Shall Mrs Ross's motion to amend schedule G, subsections 15(1) and (2), carry?

**Ayes**

Boushy, Chudleigh, Crozier, Rollins, Ross, Bob Wood.

**Nays**

Kormos.

**The Chair:** I declare Mrs Ross's motion to amend schedule G, subsections 15(1) and (2), carried.

Shall section 15 of schedule G, as amended, carry?

**Mr Kormos:** A recorded vote, please.

**Ayes**

Boushy, Chudleigh, Crozier, Rollins, Ross, Bob Wood.

**Nays**

Kormos.

**The Chair:** I declare the amended section 15 of schedule G carried.

Shall sections 16 to 18, inclusive, of schedule G carry? All those in favour? All those opposed? I declare sections 16 to 18, inclusive, of schedule G carried.

Shall section 19 of schedule G, as amended, carry?

**Mr Kormos:** A recorded vote, please.

**Ayes**

Boushy, Chudleigh, Crozier, Rollins, Ross, Bob Wood.

**Nays**

Kormos.

**The Chair:** I declare section 19 of schedule G, as amended, carried.

Shall sections 20 to 22 of schedule G carry? All those in favour? All those opposed? I declare sections 20 to 22 of schedule G carried.

Shall section 23 of schedule G, as amended, carry? All those in favour? All those opposed? I declare section 23 of schedule G, as amended, carried.

Shall sections 24 to 74, inclusive, of schedule G carry? All those in favour? All those opposed? I declare sections 24 to 74, inclusive, of schedule G carried.

Shall schedule G, as amended, carry? All those in favour? All those opposed? I declare schedule G, as amended, carried.

Shall sections 1 to 11, inclusive, of schedule I carry? All those in favour? All those opposed? I declare sections 1 to 11, inclusive, of schedule I carried.

A recorded vote: Shall Mrs Ross's amended motion to amend schedule I, section 12, subsections 28(19.1) to (19.5) of the Conservation Authorities Act carry?

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare Mrs Ross's amended motion to amend schedule I, section 12, subsections 28(19.1) to (19.5) of the Conservation Authorities Act carried.

Shall section 12 of schedule I, as amended, carry? All those in favour? All those opposed? I declare section 12 of schedule I, as amended, carried.

Shall section 13 of schedule I carry? All those in favour? All those opposed? I declare section 13 of schedule I carried.

A recorded vote: Shall Mrs Ross's motion to amend schedule I, section 14, section 30.1 of the Conservation Authorities Act, carry?

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare Mrs Ross's motion to amend schedule I, section 14, section 30.1 of the Conservation Authorities Act, carried.

Shall section 14 of schedule I, as amended, carry?

**Mr Kormos:** A recorded vote, please.

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare section 14 of schedule I, as amended, carried.

Shall sections 15 to 19, inclusive, of schedule I carry?

**Mr Kormos:** A recorded vote.

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare sections 15 to 19, inclusive, of schedule I carried.

Shall section 20 of schedule I, as amended, carry? All those in favour? All those opposed? I declare section 20 of schedule I, as amended, carried.

Shall sections 21 to 66, inclusive, of schedule I carry? All those in favour? All those opposed? I declare sections 21 to 66, inclusive, of schedule I carried.

Shall schedule I, as amended, carry?

**Mr Kormos:** A recorded vote.

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare schedule I, as amended, carried. Shall schedule J carry?

**Mr Kormos:** A recorded vote, please.

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare schedule J carried.

Shall the long title of the bill carry?

**Mr Kormos:** A recorded vote.

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** The long title of the bill carries.

Shall Bill 25, as amended, carry?

**Mr Kormos:** A recorded vote, Chair.

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare Bill 25, as amended, carried.

Shall Bill 25, as amended, be reported to the House?

**Mr Kormos:** A recorded vote.

**Ayes**

Boushy, Chudleigh, Rollins, Ross, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare that Bill 25, as amended, shall be reported to the House.

That concludes the hearings on Bill 25. I want to thank everyone for their participation on the bill. The committee is adjourned.

*The committee adjourned at 1649.*



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## Assemblée législative de l'Ontario

Deuxième session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 16 November 1998

# Journal des débats (Hansard)

Lundi 16 novembre 1998

**Standing committee on  
administration of justice**

Legal Aid Services Act, 1998

**Comité permanent de  
l'administration de la justice**

Loi de 1998 sur les services  
d'aide juridique



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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Monday 16 November 1998

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Lundi 16 novembre 1998

*The committee met at 1100 in the Valhalla Inn, Thunder Bay.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Jerry J. Ouellette):** I call this committee to order. I'd like to thank everyone for joining us here on the first day of hearings in Thunder Bay, reviewing Bill 68, the Legal Aid Services Act.

At this time, do we have adoption of the minutes of the subcommittee?

**Mr Bob Wood (London South):** So moved.

**The Chair:** Mr Kormos.

**Mr Peter Kormos (Welland-Thorold):** I should indicate first that Ms Martel appeared on my behalf at the subcommittee.

**The Chair:** So she did.

**Mr Kormos:** I thank her for that. I was unavailable, and I appreciate her subbing for me on the subcommittee.

The subcommittee report is unremarkable but for paragraph 7. Take a look at that. That is where the subcommittee recommends that the committee merely issue a press release in Thunder Bay, Ottawa and Toronto informing the public and interested parties about the hearings. That obviously is in contrast to the traditional form of advertising, the very modest advertising that appears in every paper in the area, be it weeklies or dailies, and in French-language newspapers.

Again, I wasn't at the subcommittee, so I'm not about to criticize that subcommittee function, but I am about to criticize the recommendation, because it's remarkable that this government will spend millions and millions upon millions of dollars on glossy, full-colour, full-page, radio, newspaper, television, door-to-door propaganda advertising, yet the impression one gets is that this government isn't prepared to engage in those very modest black-and-white ads that appear usually only once in regional newspapers to advise the public of a pending committee presence.

It's imperative that the committee process have more effective communication than the mere reliance upon press releases, and I quite frankly don't even know if the local papers picked up the press release. They may well have. Local people may speak to that.

But the fact is that it's discretionary, and it seems to me, in view of the hundreds of millions of dollars that this government has spent on advertising, slick, glossy,

minimum three-colour advertising, most of it, full-page ads, ads in the Toronto papers and in local dailies that are tens of thousands of dollars a crack, propaganda ads, its vicious 25-minute ad paid for by the taxpayers of Ontario which has no basis in reality, its most recent ad, which attempts to defend the government's shutdown of hospitals across the province in contradiction of what Mr Harris promised during his election campaign in 1995, along with the stuff that's appearing on our doorsteps, glossy stuff — the last one was on workfare. Did you get the workfare one? Did you get that in your area, Chair? We got it down in my area, and it touted the rat line, you know, the fink line: Turn in a welfare recipient.

I suggested in the Legislature the other day that people who got that should respond and they should turn in a welfare recipient. They could start with Andersen Consulting, because they're the real welfare fraud artists, aren't they? People who get that workfare pamphlet from the government, paid for with your money, indeed should put a name and address in it and identify a welfare fraud artist, and start with Andersen Consulting, who are on a private retainer to the government and have ripped off the taxpayers of this province for millions of dollars.

I just find it absurd that this committee couldn't see its way clear to pay for some modest black-and-white, pure message newspaper advertising, as is traditional. The clerk has the format — you know that, Chair — that has been used for the 10 years I have been at the Legislature. It's designed to provide, in a very compact way, information about a pending committee hearing so that as many people as possible have access to that hearing or at least are notified of it.

Somebody may argue that the use of the legislative channel is adequate. Please. Not everybody in this province gets cable television, and the only way you get that legislative channel with the ads, so far as I'm aware, is on cable television. Even in places where you've got cable television, do you know what cable costs? Down where I come from, because those bandits have just applied —

*Interjection.*

**Mr Kormos:** They are. Those rip-off artists have just applied to the CRTC for an increase, and basic cable down in Niagara, which is not as expensive as it is in Toronto, is climbing up to around 16 bucks a month. That's for the basic, very bare-bones cable. The most modest of packages is up around \$30 or \$35 a month. Do you understand that more and more people in Ontario



can't afford cable television? The argument that the recommendation by the subcommittee includes using the Ontario parliamentary channel is far from adequate. One, not all of the province gets cable television; two, bigger and bigger chunks of people in Mike Harris's Ontario can't afford cable television.

Second, the parsimonious — is that the right word? I suppose it is. The parsimonious approach to traditional advertising of pending committee hearings in contrast to the rather — the last time somebody accused the government of spending money like drunken sailors, they offended both drunks and sailors, so I won't suggest the government is spending money like drunken sailors, but I'll suggest that they're taking the taxpayer for a ride in terms of the glossy propaganda advertising. Again, refusing to advertise a committee hearing, in contrast to the millions and millions spent touting the government's attack on publicly funded education and health care, among other things, and its attacks on the poorest people in the province, seems to me a real hypocrisy.

**Mrs Lyn McLeod (Fort William):** I would like to preface my comments following Mr Kormos's comments on the subcommittee minutes by welcoming the committee to Thunder Bay. I'm really very pleased that the committee is here. I was keen to see the committee come on its travels to Thunder Bay. We're always anxious to have committees come to northwestern Ontario. We think that our realities in virtually every area are different from what you'll encounter in any other part of the province, so it's important for us in northwestern Ontario to have committee hearings here on any given subject.

The question of legal aid is an important one for us in this area. I know the legislation itself is essentially a restructuring. As a restructuring effort it is not terribly controversial, but the underlying issue that has led to the restructuring and therefore to this legislation is access to legal aid and access to justice, and those are issues which are of extreme importance to people in my community and across northwestern Ontario. So I'm delighted to have the committee here, and I think the presentations we'll hear from people from this region are important ones for the committee members to hear.

That adds to my sense of concern about the issue that Mr Kormos has raised, the decision of the subcommittee not to do any advertising of the fact the committee would be here. I know the local media received a press release and that they are conscious of the fact that the committee is here today, but I think the majority of the people who have requested to make presentations are here as a direct result of contact from our office letting people know the committee would be here and what the subject would be. That concerns me, because I think the issue is important enough that there should be a broader community awareness that this issue is being discussed.

With that in mind, I would like to ask if we could have the rationale for a decision that there is not to be a more traditional approach to advertising when committees are on the road. Quite frankly, the committee almost didn't come, because without the public being aware that the

issue was to be discussed and that there was an opportunity to have the committee here — as you know, if you don't have at least four presenters you're not going to have the committee come; it's going to be done by conference. The time lines are very tight to get presenters in and to be able to get an assurance that we can host the committee in Thunder Bay, so if I could get some rationale as to why the ground rules have been changed for this committee, I'd appreciate it.

**The Chair:** In response to that, in discussions of the subcommittee it was brought up, and I brought up the advertising aspect. The response from the committee dealt with the fact that there wasn't an overwhelming response from people on the legislation and the feeling was that a press release would be satisfactory. That was the response from the subcommittee. Had members other than myself brought it up, a change, then quite possibly we could have gone ahead with the advertising.

1110

**Mr Kormos:** That speaks to the very problem. How can you expect a response if the committee process isn't well publicized? Do you realize the shortsightedness and the illogic of that? Please understand me. Without being personally critical of you — you know I have the highest regard for you — that's a stupid conclusion to reach, because it's inherently contradictory. You say there wasn't a strong response to the bill; therefore, the subcommittee decided not to publicize the committee hearings. How the hell can you expect a response if the people don't know that it's going on?

If you want to refute my comments about cable television, please do so, but I've already outlined for you that those advertisements don't historically just appear in one paper when a committee appears regionally but appear in a multitude of papers, because some people in smaller communities access their weekly; others use the daily paper out of Thunder Bay like the Chronicle, I suppose. Sorry. That logic does not fly. I think if you —

**The Chair:** Had you been in attendance during the subcommittee hearing, then that perspective should have already come forward.

**Mr Kormos:** No, no. But wait a minute. I've already made it clear that I wasn't here and Ms Martel subbed. You explained the rationale for the subcommittee taking that approach. I'm saying the rationale doesn't fly. What are you saying now?

That's why the subcommittee report comes before the committee. I'm doing exactly what the committee's entitled to do, and that is, during the course of debating the subcommittee report, raising issues about it. Don't say, "What if?" If the dog hadn't stopped to pee, he would have caught the rabbit. I understand that. If I had been at the subcommittee, I would have raised it there. The fact is I wasn't; I had a substitute. That's not out of order. I'm raising now how illogical it is for you to say that because there didn't appear to be a lot of interest, the subcommittee decided not to advertise.

**Mrs McLeod:** Just briefly, because we do have presenters waiting and we're anxious to hear from them, our office notified a number of groups that the committee

would be here or could be here. We did not have to persuade anybody to come and present. There was a very high level of interest among people once they realized that the committee was going to come to Thunder Bay. That speaks to the fact that if there's not an awareness that it's there, then as Mr Kormos says, you're not going to get a sense that there's an overwhelming level of interest. But the issues of legal aid and access to the justice system are areas that people are extremely concerned about.

Had there been broader knowledge that the committee is not only coming to Thunder Bay but is going to be in other communities — and I think there is still time to address this issue; otherwise, you're not going to be able to measure the level of interest that's there. If there's a purpose in committees going out, and obviously there is, then it's to make the public aware that issues of important public interest are being discussed and to welcome their presentations. I don't think the fact that they are not showing interest because they haven't been advised that they have a chance to provide input should be a reason for not giving them notice that they will have that opportunity.

**The Chair:** Mine is not a position of explanation; mine is merely bringing forward the decision of the subcommittee and how it was arrived at.

**Mrs McLeod:** Is it possible, Mr Chairman, and would there be a purpose in revisiting the subcommittee decision before the committee continues to other communities?

**The Chair:** Mr Martiniuk.

**Mr Gerry Martiniuk (Cambridge):** The committee has to vote on the subcommittee report for the purpose of the record. The subcommittee is made up of the chairman, Mr Ouellette; a member of the Progressive Conservative caucus, being myself; a member of the Liberal caucus, and a member of the third party caucus. There was discussion that took place, and the subcommittee unanimously reached its conclusion and made the recommendation. The government caucus would be supporting the subcommittee report.

**Mr Kormos:** That still doesn't change my criticism of the decision.

**The Chair:** No, certainly.

**Mr Kormos:** Mr Martiniuk, I have no choice or alternative at the moment but to accept the version that there was a consensus reached on the issue. If that's the case, then so be it. But I still have no hesitation in criticizing that report, notwithstanding that one of my colleagues was present. It was the wrong decision.

**The Chair:** I might add that the Chair is not a voting member of that committee.

Further discussion? Seeing none, all in favour —

**Mr Kormos:** Recorded vote, please.

#### Ayes

Boushy, Castrilli, Martiniuk, Ramsay, Bob Wood.

#### Nays

Kormos.

**The Chair:** The subcommittee report carries.

## LEGAL AID SERVICES ACT, 1998

### LOI DE 1998 SUR LES SERVICES D'AIDE JURIDIQUE

Consideration of Bill 68, An Act to incorporate Legal Aid Ontario and to create the framework for the provision of legal aid services in Ontario, to amend the Legal Aid Act and to make consequential amendments to other Acts / Projet de loi 68, Loi constituant en personne morale Aide juridique Ontario, établissant le cadre de la prestation des services d'aide juridique en Ontario, modifiant la Loi sur l'aide juridique et apportant des modifications corrélatives à d'autres lois.

### ROMAN CATHOLIC DIOCESE OF THUNDER BAY

**The Chair:** At this time we would call upon our first presenter, if the representative or representatives of the Roman Catholic Diocese of Thunder Bay could come forward. Just so you know, there is a total time allocated of 20 minutes. At the conclusion of any presentation you may have, the time remaining is divided equally between the three caucuses. Thank you for coming, and you may begin.

**Ms Liz McWeeny:** Thank you very much for coming to Thunder Bay and for providing us with an opportunity to present today. I have submitted a written brief. I will be going through part of it during the oral presentation. I am the refugee sponsorship coordinator for the Roman Catholic Diocese of Thunder Bay. The Roman Catholic Diocese of Thunder Bay has a long history of working with and for refugees, both those we sponsor and those who come to our community seeking asylum. The diocese has assisted with refugee claimants since the 1980s, and I have been involved since that time in that work.

It is with particular focus on refugee claimants that the diocese is making this representation today. I am not a lawyer and thus speak from the lay perspective and as a member of a church community that wishes to ensure that refugee claimants have the fairest possible opportunity to present their history during their refugee determination process. In reviewing the text of Bill 68, there are some aspects of the proposed changes that concern us with respect to refugee determination.

Subsection 13(1) specifies the types of services to be provided under the new legal aid plan and does not include refugee or immigration law. Further to this, subsection 65(6), which outlines the budget parameters, gives a guarantee of funding for refugee and immigration matters at existing rates, but only for the next two years, and does not make provision for anything beyond April 2001.

We also note that refugees and immigrants are the only vulnerable communities currently receiving legal aid who will be excluded under Bill 68. This causes us grave concern. Bill 68 fails to maintain even the status quo of discretionary legal aid services for refugee claimants even when the existing level of access is unsatisfactory and flawed. It is our hope that instead of eliminating all legal



aid for refugee claimants, Bill 68 will be amended to recognize the immense importance of qualified legal representation during the refugee determination process.

The purpose of the act as stated in section 1 refers to the promotion of access to justice for low-income individuals and to meeting the needs of disadvantaged communities in Ontario. We would urge the government of Ontario to recognize that refugee claimants are part of that portrait.

Why do refugees need legal representation?

The gravity of the consequences: We understand that one of the tests to determine eligibility for legal aid is the severity of the consequences or the punishment for the applicant, such as a jail term. For a refugee, the failure to make a successful refugee claim before the IRB means the refugee will likely be returned to their country of origin and face serious sanctions. This often includes imprisonment and torture and sometimes execution. The lack of a meaningful appeal process to the IRB only serves to emphasize the importance of the refugee's one opportunity to be heard.

The nature of the process of refugee determination: The process of making a refugee claim in Canada is supposed to be non-adversarial and non-threatening. In practice it is entirely the opposite. It is bewildering, frightening and extremely threatening to most refugees. The Immigration and Refugee Board hearing is a one-time opportunity for a refugee to present her claim. It is highly stressful both because of its one chance and because of what is at stake.

1120

In the brief presented to this committee, we have described at some length the reasons why a refugee needs legal counsel because of their experience as a refugee. Just to summarize, the interviews are sometimes very adversarial and cross-examination can be stern and aggressive. The recounting of tragedy may retraumatize the refugees so that they cannot respond to questions, and that may be interpreted as insolence or avoidance, and almost certainly affects their credibility.

Refugees who have been tortured or sexually abused are often afraid to speak of their experiences.

Refugees come from countries where authority figures are often agents of persecution, and they come from cultural and linguistic backgrounds that are completely unfamiliar with quasi-judicial types of immigration hearing proceedings or the status determination process.

The presence of legal counsel at the actual interview is to facilitate the emergence of the refugee's history by drawing the information out of the claimant and by using other evidence and expert testimony to support what the refugee may be unable to speak about herself. This can only take place effectively if the lawyer and the refugee have had the time to establish a trust relationship, to speak about the truth of the refugee's experience and to prepare for the actual hearing. This process takes time.

We know first-hand how important the preparation time is. It has been our role over the years to spend time with refugees to help them prepare their narratives for their lawyers. Their history emerges over several sessions and

in no particular order. Where there has been severe trauma, it often takes a long time for the refugee to trust enough to disclose or even to give a hint of what they have experienced.

In a recent example, I asked a refugee claimant to write for me his story about why he was making a refugee claim. The first version he gave me was three lines long. That's where we begin. If he were in an IRB hearing, that is where it would end if he was unrepresented by counsel.

There are advantages to the system in having legal representation for refugee claimants. The Ontario Legal Aid Review report of 1997 states that unrepresented claims take longer to hear and are fraught with delays, adjournments and incomplete submissions — incidents of personal information forms being submitted in the language of origin, the failure to provide supporting testimony, the inability to provide case law references. Furthermore, if refugees are no longer represented by counsel, the length of hearings will cause huge delays in the processing of the number of claims.

There is also an issue of procedural fairness to be raised with respect to the issuance of country information packages that are part of the evidence presented by the immigration department at the refugee hearing. By sheer volume, the country information packages are inaccessible to many refugees. Unless counsel is able to sift through the package and have relevant items translated for the refugee, it may be argued that since claimants cannot know the case against them, the requirements of procedural fairness are not met.

With respect to international agreements and conventions, the Geneva convention and the 1967 protocol relating to refugee protection do not prescribe the manner in which individual countries determine refugee status. However, the Executive Committee Conclusion of 1977 and the UNHCR Handbook on Procedures for Determining Refugee Status do describe the vulnerable situation of the refugee claimant and set out certain basic criteria under which the refugee determination must take place.

Section 192(ii) of the handbook recommends that "The applicant should receive the necessary guidance as to the procedure to be followed." And section 192(iv) further states that "The applicant should be given the necessary facilities...for submitting his case to the authorities...."

Given the complexity and the formalized nature of the refugee determination process as it has evolved over the last two decades, it may be stated that representation by counsel is required to ensure that the UNHCR requirements are met.

Furthermore, the Inter-Church Committee on Refugees tells us that "the right to legal counsel is a necessary component of the right to a fair trial in international law.... The right to a fair trial with legal counsel applies to any international treaty right including the right to asylum and related appeals."

Given that provinces are responsible for complying with both the charter and treaty obligations, and that legal aid is a provincial responsibility, it may be stated that

legal representation in refugee determination should be assured by the province.

Why should Ontario pay for legal aid for refugee claimants?

With respect to federal-provincial responsibilities, refugee claimants have no entitlement to legal aid under the present act, except with discretion. Bill 68 proposes to further erode the ability of refugee claimants to access discretionary legal aid. It is our belief that this must be changed to ensure that refugee claimants are entitled to legal aid in Ontario.

The responsibility for immigration rests with the federal government. It is sometimes argued that costs for the IRB hearing are a federal responsibility. However, this is not entirely clear. Funding for refugee and immigration matters is covered under the federal general transfer payments and allocated by the province to refugee and immigration matters. Moreover, legal aid falls within the provincial jurisdiction under subsection 92(14) of the Constitution Act, which refers to the administration of justice in the province.

There is a parallel model in Ontario that negates the argument that legal aid for refugee claimants is purely a federal matter. Legal aid has a primary focus in providing assistance for matters of criminal law, including federal criminal matters. The parallel may be drawn that refugee law should not be excluded on the basis that it is a federal matter.

Lastly, the provincial government of Ontario, like other provinces, is currently in negotiation to assume greater control and responsibility from the federal government for refugee and immigration resettlement and stands to benefit from the successful establishment of refugees who arrive in Ontario as inland claimants and who remain to become productive and contributing citizens. While we do not suggest a cost-sharing formula, we urge the province of Ontario, as suggested in subsection 57(1), to enter negotiation with the federal government on this issue and to refrain from using refugees as pawns in the discussion.

With respect to financial inability to pay for counsel, most refugees, by virtue of their situation, do not arrive with the financial resources to pay for their own legal representation. Many are supported on welfare, at least until they can obtain work. With the cuts to welfare support, the payment of legal fees is an impossibility. The requirement that refugee claimants' relatives be obligated to pay their costs is often impossible to meet.

With respect to eligibility: Because refugee claimants are deemed to be non-residents of Ontario and because the IRB is an administrative tribunal, their eligibility for legal aid is discretionary. There are some issues that need to be addressed with this, which Bill 68 provides us with an opportunity to do.

The exercise of determining the viability of the refugee claim and the chance of its success before the IRB act as a first level to screen out refugee claims which the legal aid panel deems are without merit. Where the panel members have no refugee law background, this is particularly problematic. Even within our own jurisdiction we have

seen similar case applications ruled in different ways. Most recently, in two similar cases where the refugee women's claims were based on domestic abuse, one claimant was awarded a legal aid certificate and the other was refused.

It may be suggested that this screen-out actually circumvents the mandate of the IRB. What it effectively does is create a second class of refugee claimants who are discriminated against because of wealth and who have reduced chances of success before the IRB because they have been denied legal aid and cannot afford to engage counsel on their own. Elimination of any legal aid to refugee claimants, as implied in Bill 68, will exacerbate this discrimination between the very few wealthy refugees and the vast majority who cannot pay legal costs.

With respect to the status of the refugee, the fact that refugee claimants are non-residents does not take into account their potential and intended status. They are not in a similar situation to persons who are in Ontario as visitors, as tourists or even as students. They are in Ontario because they intend to make their homes here at the very earliest opportunity, and are eager to begin work, pay taxes and become productive and contributing members of Ontario society.

Our own situation in northwestern Ontario: With the cutbacks last year, the hourly allocation was reduced from 29.5 to 16. We now have only one lawyer in Thunder Bay who will take refugee claimant cases under the legal aid plan.

As a church community, we are willing to provide a lot of support to refugee claimants. We help them with housing, with food, with basic living needs, and with friendship and emotional support. We cannot provide the legal expertise they need to present their claims before the IRB.

We are willing and in fact we do provide the lawyer with support in preparation for the refugee hearing. We help with the research. We spend many hours with the refugees as they prepare their statements. We know firsthand what it takes to allow a refugee to remember and disclose.

#### 1130

We have worked with refugee claimants for 20 years, and the fact remains that with all the experience we have, we are still unprepared to represent a refugee claimant before the CRDD. The level of complexity of the legal process and the format of the hearings, the requirements of text submissions with legal case precedents is beyond our scope and most certainly beyond the scope of a claimant unrepresented by counsel.

You may wonder what we do to help claimants who are denied legal aid. Sometimes the lawyer will take a case pro bono. For the others we do whatever we can. I personally have immense discomfort in representing a claimant at an IRB hearing. Our resources to conduct legal research and present case law are inadequate. More importantly, the court-like culture, the language of the IRB hearing and the complicated methodology for submissions at the hearing and in post-claim recourse require legal



training. I regret to say that claimants who we have to represent by ourselves are not well served and do not have an equal opportunity with those represented by counsel.

In conclusion, we believe that refugee claimants must be entitled to legal representation during the refugee determination process if they meet the financial needs test. The gravity of the consequences, the complexity of the determination process, the vulnerability of the refugee and their inability to access the system with procedural fairness, demand that they be guaranteed adequate legal counsel during the refugee status determination process.

Furthermore, we request that the procedures to develop from Bill 68 pertaining to the exclusion of non-residents contain an exemption for refugee claimants in recognition of their intended status in Ontario and taking into account the length of time in which they reside in Ontario before their cases are concluded.

Consequently, we urge the government of Ontario to amend subsection 13(1) to include refugee law in the list of specified areas of law provided by Legal Aid Ontario and to make the requisite changes in other sections of the bill and related legislation to support this amendment.

**The Chair:** Thank you very much for your presentation. The time only allows one caucus to ask one question, and we give it to the official opposition.

**Ms Annamarie Castrilli (Downsview):** How much time do we have?

**The Chair:** Just under three minutes.

**Ms Castrilli:** Thank you very much for being here today, Ms McWeeny, and for making such a cogent presentation. I understand you're one of the pioneers in this area in Thunder Bay. I wonder if you might tell me a little about the number of refugee claimants you have. How many of them could in fact afford their own defence and how many are unrepresented? I know that you have said you try to assist, but how many of them actually go unrepresented?

**Ms McWeeny:** How many are unrepresented at the moment? We currently have one case in our files who is unrepresented. We do not have a great number of refugee claimants arriving in northwestern Ontario, probably fewer than 10 per year. It's significantly different from southern Ontario. However, we also make this representation as a member of the Canadian Council for Refugees, to which we belong. My background in that organization led me to prepare this presentation not just on behalf of our local group but also with respect to refugees elsewhere in the province.

**Ms Castrilli:** In the experience of your organization on a broader basis, how many refugee claimants do you think would be unrepresented?

**Ms McWeeny:** I'm sorry, I can't answer that. I do know that the Canadian Council for Refugees will be making a presentation to you tomorrow, and they will probably have those figures.

Just to go back to your first question, I should add that although we currently have one claimant at the beginning of the process without representation, we have another one who was taken pro bono by a lawyer, and we have several

refugee claimants in the post-claim process who do not have legal counsel.

**Ms Castrilli:** I understand the gist of your presentation is that this should be done as a human rights issue with respect to these particular individuals, but you're asking to go beyond what is now the status quo. I just want to be crystal clear on that. You don't want just discretionary legal aid for individuals; you want mandatory legal aid.

**Ms McWeeny:** Yes, that would be our request. Providing that the financial means test is met, we believe that all refugee claimants should be given legal representation before the IRB. We take issue with the screening that goes on with the local panel with respect to determining the merits of the claim and therefore granting the legal aid certificate on what are seen to be the merits. It is an unfair process in terms of how the refugee claimant is allowed to present their claim. The claim should be presented before the IRB, not before the local panel.

**The Chair:** Thank you very much for your presentation. We very much appreciate your coming forward today.

**Mr Martiniuk:** Mr Chairman, this might be an opportune time to interject that we left the matter of filing amendments and the time limits in your capable hands. Have you made a decision on that?

**The Chair:** We'll have that this afternoon.

#### DIOCESAN OFFICE OF REFUGEE SERVICES— DOORS TO NEW LIFE REFUGEE CENTRE

**The Chair:** Would the representatives from the Diocesan Office of Refugee Services — DOORS to New Life Refugee Centre come forward. We would appreciate it if you could identify yourselves for Hansard. You may begin.

**Ms Mary Kozorys:** My name is Mary Kozorys, executive director of the Diocesan Office of Refugee Services — DOORS to New Life Refugee Centre. The centre was established in 1993 as a community response to assisting refugees in their resettlement. We provide a number of supports for refugees including temporary housing and access to community services, as well as the important aspect of being a support to refugees through the complex determination process. At present we employ only one full-time staff person in the area of both refugee and immigrant resettlement, whose time is precious divided in assisting refugee claimants through the complex determination process.

As we see through the work of our centre, the refugee determination process can be both frightening and overwhelming. Claimants come from radically different cultural, linguistic, class and educational backgrounds. The system requires that claimants compartmentalize their experiences into the components of a narrow, legal definition, recount their story in a prescribed format and establish themselves as credible according to legal norms that are often alien to them. Claimants rely on a single

opportunity to state the facts. Adequate preparation by competent counsel facilitates the emergence of the claimant's own story. Lawyers can bridge the various cultural, social and linguistic gaps dividing claimant and decision-maker.

We have come as a community to attend the hearing today and, as such, the following co-presenters have unique thoughts to share on the necessity of legal counsel for refugee determination hearings. I'd like to introduce the first, Mr Ahmed Wais.

**Mr Mohamed Ahmed Wais:** My name is Mohamed Ahmed Wais. I'm a refugee from Somalia. I have been in this country for approximately one month. As I have no livelihood, I am being supported by DOORS until my case is finalized with Immigration. Seeing as I cannot get my necessities, it might be harsh if I am asked to bear responsibilities such as facing the cost of my legal expenses.

It is my feeling that a knowledgeable lawyer can advocate for my case and I do not think that I myself or anyone else could perform the same as a qualified lawyer on my behalf or any other refugee in my situation. I know that the Canadian government always has a good reputation and high integrity for assisting refugees coming to this country. I trust that they will continue to do the same.

1140

**Ms Kozorys:** I'd like to call on Patricio Perez.

**Mr Patricio Perez:** My name is Patricio Perez. I am from Honduras, Central America, and I have refugee status. I have a lawyer but she doesn't want to fight my case because she told me she received a call from Toronto saying they don't want to pay her. For that, she doesn't want to take my case.

**Ms Kozorys:** Thank you, Patricio. I'd like to ask Ludmyla Shnitsar, and I'm going to test my simultaneous interpretation skills, if I may, from the Ukrainian to the English language, so bear with me.

**Ms Luda Shnitsar (Interpretation):** My name is Luda Shnitsar and I'm from the Ukraine. In my view, a lawyer is very important for those people who have come as refugees. Since we have come as refugees without knowledge of the system, the lawyer helps us in every way. In my opinion, we need the assistance of both lawyers and refugee organizations such as DOORS.

**Ms Kozorys:** I wasn't expecting that comment.

Lastly, I'd like to call on Ismel Gonzalez.

**Mr Ismel Gonzalez:** My name is Ismel Gonzalez. I am a refugee claimant from Cuba. While I have been listening to Ms McWeeny's presentation and Ms Kozorys's presentation and the previous ones, what has really shocked me about all this is to think that the government of Canada can do something like this to us.

I say this because since the very beginning when I became a refugee claimant six months ago, the government of Canada has been really good to me and has given me so many things and so much support that I just couldn't believe it when I heard that there was a proposal to not give legal representation to us. This is really interesting because everywhere I go and every meeting I

go to which is related to refugees and immigrants, there is always a problem: money.

It is true that a lawyer needs to be paid, but what is also true is that none of us has a very good economic situation to afford a lawyer. Also all the paperwork for us to start working takes, let's say, a long time, because two months is a long time. Since we don't have the money to afford a lawyer, it is really difficult for us to represent ourselves. Right now, this is not a hearing and I just feel like I'm dying. I feel so nervous and this is not a hearing, so imagine a hearing which is a moment in which you are deciding so many things in your life. You feel so stressed, you feel so down that sometimes these kind of hearings turn out to be as if you were being prosecuted as a criminal and not asking for refugee status.

What I'm asking you is to think about all this and think about all of us and think that not all of us are highly educated, not all of us speak very good English to represent ourselves through all these processes. This is all I wanted to say to you.

**Ms Kozorys:** What you've just heard clearly articulates the opinion that legal assistance for refugees is a necessity created by the very complexity of the Canadian refugee determination system itself. Owing to the complexity of the system, a lack of access to legal assistance for refugees is not in accordance with the principles of fundamental justice. As a community responding to the needs of refugees, we urge you to amend subsection 13(1) of the proposed Legal Aid Services Act to guarantee funding for refugee law cases.

Thank you for the opportunity to appear this morning.

**The Chair:** Thank you very much for your presentation. That affords us approximately three minutes per caucus, and again we begin with the official opposition.

**Ms Castrilli:** I was quite moved by your presentation. It's very important for us to have first-hand evidence of the people who are going through the system. You might want to translate for the benefit of our Ukrainian presenter. It must be extremely difficult for you, and I must say I applaud your bravery in coming forward today to talk to us about this. Your comments fall along the same lines as the ones that were made before.

Let me ask you this question. Right now, the status quo of the law is that, at best, there's a choice as to whether there will be legal aid certificates issued for refugees. How often is that discretion exercised, in your view?

**Ms Kozorys:** As Liz mentioned in her presentation earlier, we have approximately 10 to 12 claimants per year, but you find that every single time that the application for legal aid assistance is made, your desk, like this, is teetering, not knowing where the application is going to go and whether or not the claimant will be successful in receiving legal aid assistance.

At present, we have the irony of two refugee claimants coming forward with nearly identical claims. The country of origin is different, the circumstances may be slightly different, but in one situation the decision was made in favour and in the other was not. How do you explain that



to two people who have suffered and continue to suffer the same consequences?

**Mrs McLeod:** Mary, Liz noted in her brief the Ontario Legal Aid Review report in 1997 that showed the decreasing trend in terms of the numbers and the costs of legal aid representation for refugees. My assumption was that that's because there has been an overall decrease in legal aid certificates that are available —

**Ms Kozorys:** Exactly.

**Mrs McLeod:** — and not because there was a decreased need. Have you found a similar trend in terms of the screening process that determines whether or not —

**Ms Kozorys:** The screening process itself is at best rather adversarial.

**Mrs McLeod:** So with a decreased number of legal aid certificates and therefore decreased numbers of refugees getting legal aid support, you're finding that the screening process says no more frequently than it used to?

**Ms Kozorys:** Yes. In a number of cases that we've seen, for example, in the past year, that situation has been so.

**Mrs McLeod:** So it's really a cost-driven screening as opposed to a merit —

**Ms Kozorys:** It is, to a merit, exactly, and the fact that essentially the person hasn't come before the IRB yet. We haven't reached that plateau, yet already we're having to essentially argue on the same merits.

**Mr Kormos:** We don't have a whole lot of time. I should tell you that the concern over the omission of funding, short of the two-year guarantee of stable funding, and the fact that it's spoken of there in subsection 65(6), I think it is, yet not referred to in section 13, speaks loudly and clearly that refugee law is not going to be part of the scope of legal aid services.

It's interesting because on the day this was introduced for second reading, a Tory backbencher, Mr Tascona, shared leadoff with Mr Martiniuk, the PA to the Attorney General. He said the reason for abandoning refugee immigration law is because of the federal government's downloading. For these guys to complain about downloading is quite ironic, quite frankly.

But I put to you, because the argument was made earlier, the response to the argument, "The feds have responsibility for the Immigration Act, therefore they should be funding legal costs for refugee claimants." The feds also, as has been noted, have responsibility for the Narcotic Control Act, for the Criminal Code of Canada, for the Divorce Act, for all the Federal Court appointments, for the Young Offenders Act, under which the legal aid plan provides counsel because of the requirements of the YOA. The YOA, as I understand it — people here who are lawyers might have a better handle on it than I do — is what put the province in the position of being compelled to provide legal aid assistance to young offenders, yet the same argument isn't being used there.

I'm concerned that this government is exploiting some rather right-wing and sometimes racist reaction to new Canadians and to many of those new Canadians who are

seeking refugee status. I don't know if you share that view or not.

**1150**

**Ms Kozorys:** I'm certainly not here as a politician; I'm certainly not here to be caught in the crossfire of a number of interested parties. We're really here together to articulate the fact that decisions have to be based on need. I know there are many cost-sharing scenarios that have been reached between the federal and provincial governments on other matters, and we hope that could be done here.

**Mr Kormos:** I just put to you — because we expect to hear from legal aid clinics and people in your position over the course of the next four days in Toronto, in Ottawa and back in Toronto again — there's a whole lot of pussy-footing around by some of these organizations who don't want to get involved in the politics of it. I'm telling you, my friend, that it's very political. This government, I'm convinced, is headed towards defunding of legal aid because they've only guaranteed stable funding for the whole system for three years. They won't legislate anything else.

I appreciate what you're saying, but I'm telling you that advocates for refugees, advocates for the poor, advocates for women, advocates for those who are forced to appear in front of courts had better start becoming very political about what's happening, or else they're abandoning, in my view only, their role as advocates.

**Mr Martiniuk:** Thank you very much for your presentation. We always get an excellent welcome in Thunder Bay.

I have to point out to you that the government too is concerned with refugees and immigration in regard to legal aid. That's why we guaranteed a two-year continuation. In the present act there is absolutely no mandatory legal aid for immigration or refugees, and that does not change in the new act. As a matter of fact, I think we've improved it, because at least we've given a two-year guarantee. Legal aid certificates in this province take up 7% of the applications of legal aid in Ontario, so I happen to think that two years is an improvement.

When I say the guarantee is for two years, after that we have an independent board for the first time, as you know, Legal Aid Ontario, which is made up of a majority of non-lawyers, and they will have the jurisdiction and the duty to measure the priorities of the legal aid plan. I can see no reason why they would not continue the legal aid plan in regard to refugee status. There's certainly nothing that precludes them in the legislation.

The Ontario government is always concerned with funding, though, and we're talking about fair funding between our province and the feds. The federal government has chosen to reduce the funding of the legal aid plan in regard to refugee status from \$14.4 million in 1991 to \$3.8 million in 1997, a substantial decrease of funding, and we still have issued 7% of the applications for refugee and immigration matters.

I think it's an important field. When I practised law I did not happen to practise this; however, I have dealt with

many lawyers who have indicated some of the stories from their clients in the country they left and their hardships and dangers. I personally appreciate what you're saying here and I have to agree with you that the matter of immigration and refugee status is an important matter. I hope it will continue to be represented by adequate legal counsel, as it has been in the past.

Thank you very much to all of you for your presentation here today.

**The Chair:** Thank you very much for coming forward today. We very much appreciate your taking time to bring your views forward.

**Ms Kozorys:** Thank you for the opportunity.

#### DISTRICT OF KENORA LAW ASSOCIATION

**The Chair:** We call upon our next presenter, from the District of Kenora Law Association. If you could come forward and identify yourself for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Mr David Gibson:** Thank you, ladies and gentlemen. My name is David Gibson. I have been asked by the District of Kenora Law Association to make a presentation here today. I am primarily a criminal defence lawyer and I represent people from as far south as Thunder Bay to as far north as Fort Severn, which is on the shores of Hudson Bay, and everywhere in between. To give you some idea where Kenora is, I drove six hours yesterday to be here; I'll drive three hours to Fort Frances to be there tomorrow. It's a rather unique kind of practice.

I have one point that I want to make today, and that speaks to the issue of maintaining a role in legal aid for the private bar. It's important to understand that as a defence counsel practising in the area of criminal law, in order to be effective and successful you have to do three things: You have to foster and retain professional respect from the crown attorney's office; you have to establish credibility with the bar; and you have to maintain the confidence of your clients. It is important to realize that it's the clients who choose the lawyer, not the other way around. In my area, after April 1996 there were very few lawyers who would accept legal aid certificates. Eventually it was necessary to appoint a full-time duty counsel to assist people, particularly at the judicial interim release stage.

That has worked pretty well in Kenora, but when it comes to representing people in trial matters or even reasonably complicated guilty pleas, it is a bit naive to expect that anybody who is working 8:30 to 4:30 is going to bring the level of commitment necessary to adequately represent people. That's not a knock on the people who attempt to do that, but the fact of the matter is that when you're a private practising lawyer you understand in a very immediate and direct way that if you don't put forward all available defences for your client, if you don't put forward all available mitigating circumstances on their behalf, you don't know where your next case is coming from. It keeps you honest. My concern would be that if we

move towards a more encompassing clinic model, you're going to see a certain comfort level that is perhaps not healthy among the criminal defence bar.

I should disclose my bias. Perhaps 35% to 40% of my practice is legal aid. I have an associate who handles mostly legal aid cases. I don't think the point I've just made necessarily impacts on my situation all that greatly. Because of the uniqueness of the area I practice in, it wouldn't be very feasible to have a clinic model deliver the kind of services that the bar in my area does. But it's important, I think, for those of you who are considering how legal aid funds will be administered in the future to recognize that an independent and private defence bar has an important role to play in the delivery of services and that ultimately the purpose of legal aid is to assist the public to obtain effective legal representation. The best way to ensure that is to allow the public to make their own decisions about who is going to represent them.

#### 1200

There are many issues I can speak to. I could spend a very long time talking about how difficult it is to practise and what I foresee being the future of a legal aid practice in my area, but frankly I wouldn't know where to begin. I'll make one point, because I think it's something that is bubbling underneath the surface in my jurisdiction. Just so you don't wonder how many courts there can be in Kenora, I'm in court somewhere in my jurisdiction four days of every week. I go to northern First Nations communities on a rotating basis, and there are many social problems that are surfacing now in a lot of those First Nations communities. One of the extreme difficulties of practising in legal aid in those communities is that after the April 1996 changes, you receive a limited number of hours to assist any particular accused person. Your hours are limited by the certificate you receive.

What's happening increasingly, and I regret to say is going to happen more and more, is that, particularly for individuals who are charged with sexual assault in First Nations communities, there are a lot of antiquated allegations coming forward now, legitimate allegations, involving individuals who may be facing 11, 12, 13 or 15 charges that stretch over a period of 20 or 25 years. To represent an individual like that, you're granted one certificate. You have 11 hours to represent that person, and every one of those allegations is separate. It just can't be done.

In my practice, since April 1996 I've had one request for a discretionary increase granted. The people who are doing the work are trying to do the best they can within the limits they've been given. It's difficult. I can tell you, as somebody who is on the front lines and who works in a small jurisdiction where the bench, the crown attorney's office and the defence bar deal with one another on a regular basis, so there are very few secrets between colleagues, nobody likes to be involved in a process where you feel that an innocent person may be being convicted. That includes the bench and the crown attorney. Crown attorneys don't like to convict people who haven't done anything. They don't like to unduly punish someone who



did something that was more mitigated than what they're accused of and they count on defence counsel bringing forward information that's not given to them by police or investigative authorities. When you are limited to four hours to gain someone's trust, find out about their background and put forward effective submissions in court, you can't be confident, nobody in the system can be confident, that the individual who is appearing in court is getting a fair shake.

On a very personal level, it's difficult to deal with. It's one thing to deal with the Guy Paul Morins who are subsequently exonerated through some objective testing; it's another thing to deal with an individual where all you do is suspect that this person may be getting shafted because there's no objective way to tell. It's a tough way to live when you're asking yourself all the time whether you did everything you could, knowing that everything you could do was limited by the time you were given.

I would prefer to answer questions for the rest of my time.

**The Chair:** Thank you very much for your presentation. That allows us about three and a half minutes per caucus. We begin with the third party.

**Mr Kormos:** We talked with the last group about subsections 65(5) and (6), which provide for guaranteed stable funding for refugee law for two years and guaranteed funding for legal clinic law for three years. The Attorney General has promised that the overall funding of the legal aid system will be maintained for three years in a stable manner, yet that isn't included in the legislation. Notwithstanding that he has been urged to include it in the legislation, there's no suggestion that it's going to appear in the legislation. I have known the Attorney General since before he was the Attorney General; I've known him since before he was an MPP. I'm loath to take his mere say-so that there is even going to be three years of guaranteed funding, because if he's not prepared to put it in the legislation, that makes me worried about his mere say-so.

I suppose I'm asking you, as a member of the Legislature, should I support Bill 68, should I vote for it, when Bill 68 may well be the death knell for legal aid because it doesn't provide for any minimum standards for either certificate programs or credit programs and gives the government sole discretion as to funding?

**Mr Gibson:** I think I understand your conundrum. My position on that is this: It may be that in the short term, funding to legal aid is cut so drastically that it's not effective. In my view, that will be a short-term thing, because frankly we will have social chaos. In my jurisdiction it's very short-sighted in many ways to cut legal aid, because people who are handling especially the more minor legal aid cases are in fact doing a lot of social work. They're dealing with people who are poor, who are dysfunctional, and the lawyers are the ones who are putting plans together for these people, trying to get them on their feet so that when they come to court the judges have — it's a very blunt system. There are very few options for a judge: "Do we send someone to jail? Do we

put him on probation? How do we supervise this person?" The judges count on the defence counsel to try to put these people together in some fashion and bring them before the court and give everyone, the public included, some assurance that whatever they've just done isn't going to happen again.

I handled a case in Kenora last Monday that dealt with a man who was seen rummaging through garbage cans in a back alley in downtown Kenora who was approached by three 12-year-old girls who started to tease him. He pulled a penknife out and waved it in their direction and ended up charged with weapons dangerous, threatening and assault with a weapon — and it was that, but that's not the issue we're dealing with in court. Nobody wants to see that happen again, so how do we deal with this guy's social problems? If you have four hours to do that, all you're going to do is come forward and say: "He's not such a bad guy. Put him on probation." You don't want to put him in jail. All you're going to do is warehouse him for a short period of time and use public funds.

You have to use public funds somehow. Where do you do it? Do you try to surgically use the funds to prevent further criminal offences, or do you deal with it after the fact and spend more money? It seems to me that eventually people are going to get the idea that spending money at the front end to help these people, rather than warehousing them afterwards, is a more cost-effective way to do it. It may be that in the short term we're going to have to learn a difficult lesson and try it without legal aid. It will be a mess, and people will go back to it.

**The Chair:** We now move to the government members.

**Mr Bob Wood:** Having spent the last 26 years in a private practice of law, thereby learning the true meaning of "unpopularity," I strongly endorse what you've said.

**Ms Castrilli:** But then you became a politician; that's worse.

**Mr Bob Wood:** Then I learned real unpopularity. Having done that, however, I think there's no doubt that the points you made about that are correct and certainly receive my personal strong endorsement.

I'd like, however, to ask you about the issue of how the legal aid plan is run. You hear the suggestion that more case management by the plan might be helpful. In other words, when a case comes forward, they would have greater discretion as to the amount of resources to put into the case. In other words, if it were a weak case that really called for a guilty plea, there would be less resources; if it was a different kind of case, there would be more resources. Do you think that has merit, or do you think that's a bad idea?

**Mr Gibson:** I think it's hard to implement. The problem is that even cases that are simple guilty pleas, as I say, sometimes involve a complicated social situation behind them that needs some time. Fundamentally it's a good idea. Administering it might become more cumbersome and itself suck up more resources that could be used more effectively. The more surgical way to deal with exactly that problem is to fully implement the Martin

report and get the crown attorneys to screen some of these charges before they get laid, because there's a lot of chickenshit charges that get laid that don't get screened out of the system until after a charge has been laid, a legal aid application has been made, some committee has to review it and either approve the application or disapprove it. It's gumming up the system.

1210

**Mr Bob Wood:** I'd like to touch on another item that does not directly relate to this bill but in a very big way indirectly relates to it. By the way, I think the idea of early intervention is good and I think it has to happen before we get into the court process. But my question relates to another aspect of getting the community involved and that's the idea of citizens' courts, where a lot of minor offences would go out of the judicial system to the citizens' courts, as in the Manitoba system and a system that is practised in a number of aboriginal communities here. Do you think that's a good idea?

**Mr Gibson:** I think that's a great idea. The only problem is getting people motivated enough to do it. Very recently Rupert Ross, who's a crown attorney in my area and someone very knowledgeable in this area, and one of the provincial judges and myself sat down in a northern community and encouraged them to move in the direction of a tribal council, to settle some of their own difficulties without bringing the court system in.

We had to say, fully and frankly, that they shouldn't feel guilty if they don't feel they have the resources to make this work, because we don't have it. In the communities that I work in, we have too many citizens who like the sort of alienated way we work now, which is, the police charge somebody. If you're a victim or a complainant, you drop out of the process, but you retain the right to, afterwards, moan about what happened. But most don't want to be bothered. They don't want to sit down with a perpetrator and find out, "Why did you do this? Do you understand how this made me feel?" and get involved in a process that really has an incredibly reformatory effect on a lot of offenders.

It's a matter of motivating people to see the way the system works in a different way. The adversarial system, the way it's working right now, doesn't always serve people that well but it's the communities themselves that have to decide, "We're willing to invest the energy and the time," and a lot of it would be pro bono, presumably.

**The Chair:** We now move to the official opposition.

**Ms Castrilli:** Let me first comment on your eloquence. It's really quite refreshing and I appreciate it very much. The distance that you've come, as well, to make the point is something that we certainly note.

I'd like to ask you a couple of questions, if I may. I know this isn't your brief that was presented to us but some points that are made are very important.

The first point that I see here is about the concern that the Attorney General is controlling the appointment process to this new independent body that is supposed to look after legal aid. It's a concern that we've raised in the Legislature as well. The proposal here is that, out of the

board of 11, there would be three that would be appointed by the law society without those decisions being able to be screened by the Attorney General and that everyone else would be appointed through a process set up in the Legislature and it would be a legislative committee that would do that to allow a more diverse reflection of views on this board rather than having appointees who might reflect one ideological bent. I wondered if you might comment on that.

**Mr Gibson:** I have to say that, from my perspective, in my jurisdiction everybody knows everybody, so people are scrutinized. My concern is not so much that you're going to have loose cannons appointed who are going to be doing obvious, ideologically driven, mistaken things that are going to spin the system out of whack. I think the concern more is that people become lazy unless they have an interest in the system, a direct stake in the system. They allow themselves to go along, to get along. The system that we have right now requires people to be checking up on one another.

In my case it's the client who checks up on me. If I want to go along with what the crown attorney wants or the direction the judge is pushing me, it would be easy for me to do that. I would prefer, in some ways, to work 8:30 to 4:30, go into court, and do my thing. If the clients are a little peeved at me when they finish, I know there's going to be somebody sitting across the desk from me the next morning. My job, in part, is to second-guess police officers, and everybody in the system is balanced out that way.

It has to be the same way in the appointment process. There need to be people who are watching what the other people are doing and have a stake in remaining vigilant and just not getting comfortable and saying: "All right, we really don't need to do that. I don't want to fight with you because we're all friends here and we want to get along." That's the biggest danger. It's not that people are going to be stupidly ideological, but they're going to be lazy and just go along to get along. So we need to have people who have a stake.

**The Chair:** Thank you very much. We very much appreciate your coming forward today with your presentation.

#### ONTARIO NATIVE WOMEN'S ASSOCIATION

**The Chair:** We call our last presenter of the morning midday. Would the representatives of the Ontario Native Women's Association please come forward. If you could identify yourselves for Hansard we would appreciate it. You may begin.

**Ms Marlene Pierre:** Thank you, Mr Chairman and all of the honourable representatives of the government who are here to hear us today. My name is Marlene Pierre. I am the president of the Ontario Native Women's Association. With me is Audrey Gilbeau, who is the executive director of the association.



I am pleased to see Lyn McLeod here today, who is a representative of our community and who we're pleased came to the official opening of our business. I'm happy to see you again. I didn't realize I'd see you so soon.

I want to explain that the association is representative of aboriginal women in Ontario. We are an advocacy organization. We speak to any and all issues that affect the economic, social and justice lives of our people and their families. We have been in existence since 1971 and have had a history of being unwelcome as well, because we have a tendency to tell the truth and we have a tendency to bring forth the real issues that exist in our communities in every way that affects our families. We have enjoyed the participation at many tables, especially during the last government, who made sure that the voice of our people was being heard.

I welcome this opportunity today because I feel that this government that is here today does not want to listen to us and puts the aboriginal agenda on the very back burner. I know this to be true because I have been engaged in many discussions and quite often when we bring our word to the table it is not listened to. I hope with our being here today that we will be listened to.

We have a great interest in justice issues. Our organization was fundamentally responsible for the inclusion of the equality clause in the Canadian Constitution. Our member Jeannette Corbière Laval fought for the rights of aboriginal women in the removal of the section 12(1)(b) case, where when we married a non-Indian we were, for some reason, no longer considered Indian, but non-native women could be considered Indian. Those are the kinds of rights that we fight for.

1220

Today I want to address at least three principles. There are many, many questions that we do not have answers for when we're making our presentation today. The three principles are the principle of inclusion, the principle of need and the principle of fairness. There are four other issues that we want to make short statements on, but in the interest of the discussion around reasonable representation of society on the to-be-formed corporation, I have a very serious concern. We addressed this issue when we were talking about the office of the police complaints division, which was immediately removed when this government came in. It was like the police investigating police actions that were unfavourable, especially to our people.

We had had that legislation altered to our benefit and we're hoping this legal aid body that is about to be approved by Parliament is going to take into account inclusion of our people, that at the corporate management level and in the region — I don't know what structures are being discussed and how the services are going to be delivered in the far northern communities, especially the isolated communities, but I want to recommend very strongly that aboriginal women, aboriginal representation, are included and built into the process of selection at the management level and at what I'll call the regional level. It's very important that the users of this service have an opportunity to lead how this service is going to be

delivered to our people. I hope that the Attorney General, Charles Harnick, is amenable to that kind of recommendation.

The principle of need: Everyone in this room and in this country knows that the living conditions, including the justice aspect of our lives, are comparable to Third World countries. This statement was established and will be supported continually by the World Health Organization. Ontario's no different. In our northern communities there is poverty; unemployment, especially for women — and 50% of our families are sole-parent-led families, quite often on some form of assistance. I'm just going to leave it there, because I can quote you statistics and case studies all day about our women and their children in our communities who do not enjoy the kind of life that most Ontarians do. So the financial need is there, well established by our women and by our communities in general.

I also want to talk about the issue of fairness. I want to use the example around alternative justice that was raised earlier by the speaker before me. Good idea, something that we have asked for ourselves in our right to determination, but in actual practice that system does not work at all times. I use the example of the Sandy Lake case, where the chief was the perpetrator and found guilty. His sentence, in our view, was a holiday in the woods, complete with food brought to him, a special place built for him — all those amenities that we can't even get outside the legal system — and he was treated so well it was like a holiday. Being exiled in that manner is not, for us, proper implementation of justice. No accommodation for the victim in this case. Who paid for that chief who was charged? It certainly wasn't himself. There are all kinds of examples like that that we could talk about all day.

One of the main criticisms that we've had of the legal aid system in the past is that, especially in the northern fly-in communities, and I even see it here in Thunder Bay, lawyers continually plea bargain our people into admission of guilt when there is no guilt. There is very little faith in the system that is supposed to protect our people, any person, and that has to stop. They're using the legal aid system to do that, and they know that. The judges know that, the crown attorneys know that, but it continues to happen all the time. There is no need to plea bargain your way out of a charge. We try and tell our people not to do that, but they want to get rid of the case and so forth and they just let the system take care of it.

Everyone in this room and outside of this room has heard about the initiatives that are being taken by the federal government in the abuse issues of our people in the residential school system. It is despicable that lawyers all across this country and in our province are going out and headhunting for the victims so that they can represent them in court, so that they can, at the end of the day, be the ones who have won. I don't know how that is remedied, but I think that is one of the most terrible things that is happening in this whole issue of the residential school system situation. How dare people try to make money off our people's — the deadliest sin that was made



in the history of this country? I don't know where the mores are, but that is an activity that is right now — and even in one case, hiring native people to go out and be their forerunner to find our people. Are they getting legal aid in Ontario for these cases or are they having to hire these unscrupulous lawyers to go and represent them and then take their money from them if they win? And in most cases they're winning.

I don't know if this affects this hearing but it's something I think the law society should hear. I think any aspect of the justice system in Ontario should hear what is really happening out there.

Another very critical issue: We have just had in this very hotel an assembly of over a hundred women delegates from all across the province to talk about the various issues, very difficult issues that face us as women. One of them was the lack of matrimonial, property and child custody protection for those women. Right now, I'm not stretching the imagination in any way whatsoever when I say that because the federal government does not have any bylaws or means through its own legislation under the Indian Act to protect women, quite often when there is a separation in the family on the reserves, our women in many cases are forced to flee the community, mostly because of violence towards them. Quite often the children remain and there are no rights established for these women to have any access to their children. There are no laws protecting the women, when women outside of those reserve communities can have access to their matrimonial property and goods.

1230

Our women on the reserve don't have the benefit of law to protect them. When they flee, they flee to urban communities or the closest place where they can seek a safe haven. They don't know how to proceed when they get off the reserve, because now they can't access legal aid through your process. It has no application on federal reserves. In my view, there has to be some means by which this government can ensure protection for women who live on-reserve and all these kinds of matters.

Also, in the protection of treaty rights, hunting rights, I'm very interested to know how civil law is going to protect treaty rights and all these other matters that I have raised. In hunting rights, for instance, hunting out of a treaty area, can our people access legal aid? I know of many cases where they have not been able to access legal aid because of the nature of the charge. I'm very interested to know whether this body is going to be able to address these critical needs of our people in these specific areas.

I'm only making these statements. I want to entertain questions, leave more time for that, but I have brought to your attention several issues and I'm not sure how you're going to be able to accommodate them, even if you wanted to, because I know they're very complex issues that involve the federal government. Most of the time when we've been talking to any provincial body such as this, it quite often gets sloughed off because of this excuse, "We cannot deal with this because it's a federal matter." Well, I think you can. Our people live in this province and there

has to be a concerted effort by this government to deal with those problems.

I have asked, as a matter of fact, Charles Harnick, in a letter I sent approximately three weeks ago, to help our organization, to lend us some technical assistance, because they're not giving us any money any more to do these kinds of things. But we wanted the minister to consider someone from his ministry who is in this capacity of family law to help us draft legislation as a first opportunity that we would have to have an influence on the Indian Act. We're going to be meeting with the Minister of Indian Affairs in a few weeks in Sault Ste Marie. We want to be able to say, "Here, Ms Stewart, is a document we've prepared that has been properly researched and properly worded so that you can put these words into your Indian Act." I want to be able to say: "We got that assistance from our province of Ontario because we don't get any help from you, Madam Minister. We don't get any help from any other body but ourselves."

None of us are lawyers, and I don't like to beg on behalf of our people. I believe that our needs are honourable. I would hope that through this committee we would be able to influence how the whole issue of matrimonial property and child custody will be dealt with in the province of Ontario. I'll now ask Audrey, if you have anything you'd like to add.

**Ms Audrey Gilbeau:** Good afternoon. I'd just like to make two points with respect to this forum. From what I've read over regarding the composition of the corporation, one of the questions I pose is that it seems to be representative of the legal community. However, when we talk about the reasonable person, that reasonable person is not always a lawyer. I'm sorry. What representation from society in terms of socio-economics, poverty, justice, all of those realms that come into the scope of justice? It's not simply a matter of law, it's also a matter of environment, so I'd like to know how that aspect will be incorporated within this process.

Also, when we talk about administration and efficiency of operations and resources, and cost savings as well, when we look to the other side of that, justice is not always represented when we throw those equations into it. Therefore, again, how will this be considered in this whole process?

Marlene spoke about technical assistance. One of the common problems we're having right now is that at one time it was easy to access, under legal aid, legal assistance for family matters, separation and divorce, and child custody. That's becoming more difficult.

To compound that problem, accessing the Human Rights Commission, for example, you call and you get a computer on the other line that tells you to press 1 and press 6, and you go through it and you never, ever reach a person. To further compound that, their office has been downsized. They're open, I think, three days a week and you're not always able to reach somebody.

We find that our membership contacts us now — at one time the issues were very specific, but at present on any given day you're going to get issues regarding housing,



exploitation in terms of housing. We have other situations that fall out of the common realm of child custody. We have extended family situations now where child welfare organizations are involved, and there are inequities within that system.

The government has spoken many times about recognizing self-government and self-determination. However, no mechanism has really been set in motion to recognize the difficulties and the challenges that are directly involved in that process, specifically speaking about child welfare and apprehension, extended families. It's not necessarily a positive relationship, and we're finding that more often than not the child welfare agencies are having to, and rightly so, because they are governed by the legislation — but they are not making every opportunity available for the extended families to participate in that forum.

I'm sure if we sat here and talked further that other issues would come into play. Having read the document, one of the points of interest for me is that this process is considering alternative methods for looking at justice and looking at administration of the legal aid plan. What other mediums are you looking at other than the circles of mediation? Will advocacy be considered in this process?

We know that we have Kinna-Aweya Legal Clinic in Thunder Bay but even they have changed in the past few years in how accessible they are. We would just like to know if you're looking at a more —

**The Chair:** I'm afraid I'm going to have to ask you to sum up, because you're well past your time. If you could summarize, we'd appreciate it, please.

**Ms Gilbeau:** That's all I have to say. Thank you.

**The Chair:** Thank you very much for coming forward today. Unfortunately, that doesn't allow us any time for questions and answers, but we very much appreciate your coming forward with your presentation today.

With that, this committee sits recessed until 2 o'clock.

*The committee recessed from 1241 to 1402.*

**The Chair:** I call the committee to order. Just prior to turning the floor over to Mr Kormos, I want to let the committee know that the cut-off time for amendments for clause-by-clause will be 3 o'clock this Friday.

**Mr Kormos:** On a point of order, Mr Chair: I'm wondering what I must do to force the Conservative Party to engage in a high-profile, expensive ad campaign in my riding, criticizing me with television coverage, radio coverage and perhaps large-format news —

**Mrs McLeod:** Envy will get you nowhere, Mr Kormos.

**Mr Kormos:** What do I have to do?

**The Chair:** That is not a point of order. However, I'm sure a well-detailed plan would assist.

**Mr Kormos:** Is there anything I can do to offend them to prompt them to do that for me?

**Mr David Ramsay (Timiskaming):** Your mere presence may accomplish that.

**The Chair:** Thank you, Mr Kormos.

## THUNDER BAY LAW ASSOCIATION

**The Chair:** Our first presenters of the afternoon are representatives of the Thunder Bay Law Association. Come forward and identify yourselves for Hansard, please.

**Mr Kevin Cleghorn:** Good afternoon, Mr Chair. My name is Kevin Cleghorn. I'm a practitioner with the law firm of Buset and Partners in Thunder Bay. I was called to the Ontario bar in 1984. At the present time I'm the secretary of the Thunder Bay Law Association and chair of the family law bench bar committee.

**Mr Mike Montemuro:** I'm Mike Montemuro. I was called to the bar in 1988. I'm a criminal lawyer. Specifically I do duty counsel work, exclusively since April 1996 when legal aid passed away. I'm here as a member of the Thunder Bay Law Association and I'm the criminal liaison to that organization.

**Mr Cleghorn:** We were asked to attend before this committee on Friday afternoon. That has allowed a rather perfunctory review of the legislation. In terms of the nuts and bolts of the legislation, all I can indicate is that we consider anything that purports to amend or alter the existing system, remove the legal aid plan from the law society, to be a positive step forward.

At the time I was called to the bar in 1984, the legal aid plan in Ontario was something to be extremely proud of. It provided an excellent range of services to lower-income individuals in the province. Over the 14 years of my practice, it is regrettable and unfortunate that the legal aid plan has essentially gone by the by. It is now at the point where it is frustrating lawyers to a significant extent. We are unable to provide anywhere near the quality of legal services that we were once able to provide to the people in the province. As well, it has become an extremely difficult thing to watch as unrepresented litigants come into both the Provincial Division and the General Division courts, attempting to find their way. The impact of that has been significant in terms of the administration of justice generally, because unrepresented litigants, through no fault of their own, tend to slow the process considerably. As a result, it has affected everyone in one way or another.

Essentially, the legal aid plan is one cornerstone of the administration of justice in our province, and to a large extent it will affect other aspects of it in the event that the plan is a viable, effective plan that indeed provides high-quality legal services to lower-income individuals or not.

I would comment on only one particular aspect of the legislation, and that is subsection 12(1), where it indicates that the new corporation "shall establish and administer a cost-effective and efficient system for providing high-quality legal aid services within the financial resources available to the corporation." To a large extent, that will determine the success or failure of this new corporation, exactly the extent to which appropriate and necessary financial resources are available to the corporation.

One of the very positive aspects of this new legislation, in my view, is the expansion of the clinic system. We in

Thunder Bay are extremely grateful that we will have the opportunity to have a family law clinic operating in 1999 that will hopefully serve the citizens of Thunder Bay and the surrounding areas much more effectively than the current system.

The concern will be, of course, the degree to which the resources are spread between the clinic system and the certificate system. For the practitioners who continue to receive certificates, the concern would be that in the event that too much in the way of resources go to the clinic system it will result in further evisceration of the certificate operation, which might result in fewer and fewer practising lawyers engaging in accepting certificates from time to time.

I will let my colleague comment on the new act from the standpoint of the criminal practitioners, and stand open for any questions you might have after he has concluded his presentation.

**Mr Montemuro:** The budget for legal aid is in the neighbourhood of \$273 million. It's the size of a medium-sized school board in the province of Ontario. This is for all the poor and disadvantaged groups that make up the majority of people passing through the justice system. Of course, that's divided between immigration, family and criminal. Zero-tolerance policies, while serving a valid social function, also exacerbate the problem of inadequate funding.

Imagine yourself wrongfully accused of a crime. You find the arsenal of the state arrayed against you — the police, the crown, forensic experts, victims' rights coordinators, a whole array of state resources — and you have your lawyer. You might have to beggar yourself to be vindicated or, if you are poor, you have to rely on legal aid.

In my mind, it's always been an anomaly that legal aid paid a lawyer two thirds of the fee payable for a guilty plea and one third more if the matter went to trial. It should be obvious that a trial requires more than one third more work than a guilty plea. In fact, it may take three to 10 times more work. The simple fact is that a lawyer cannot afford to take matters to trial on legal aid. It's not greed. They just cannot begin to do the work for the fees paid.

It is my belief that this fee structure has a direct impact on the number of people who plead guilty. The criminal pretrial, an early form of alternative dispute resolution, has also had the effect of encouraging more guilty pleas. Coupled with these factors is the crown's desire to get a conviction by any means short of trial. They haven't the resources to take all cases to trial either, and yet they're involved in a numbers game where they have to show so many convictions. These three factors have led to an expectation that a certain high percentage of people charged will plead guilty. This expectation is almost treated as a law of nature, when in fact it is attributable to man-made factors including those just mentioned.

You cannot build an adequate legal aid system on the expectation that so many people will plead guilty, and yet that is just what this legislation proposes. For example, the

proposal that would have lawyers bid for blocks of cases for a set fee is like buying a pig in a poke. A lawyer cannot know, there being no natural law, how many of those cases will be guilty pleas and how many for trial. This proposal will put even greater pressure on lawyers to find that middle ground and plead their clients guilty.

#### 1410

The proposed corporation is supposed to be at arm's length from government. However, in its reporting function — to report to and advise the Attorney General on features of the justice system that affect the demand for legal aid and in setting priorities for what sort of cases warrant legal aid — there is a fear that the relationship between defence and prosecution may become too cozy. In fact, the legislation refers to partners in the justice system. It's not a term defined in the legislation but it's there.

Of course, the problem is that in no way can the defence and the prosecution be partners. They are in fact adversaries in the truest sense of the word. It is this adversarial nature of the criminal justice system, provided there is a level playing field — that is, adequate defence funding — that is the best way to protect the rights of persons who come into contact with the system. The bottom line is more money. The government wants a more efficient system. How do you measure efficiency in an adversarial system? More guilty pleas? Further trials? I don't think so.

Again, the problem involves not realizing the importance and uniqueness of the adversarial system. Despite attempts to find the middle ground, that is, in the pretrial process, the system remains a zero-sum game. One side wins and one side loses. A justice system that is worthy of its name must not only convict the guilty; it must also ensure that it does not convict the innocent. Remember the old saying that 100 guilty men should go free rather than one innocent man be hanged. Let us not let number crunching weaken the presumption of innocence. For it is the cornerstone of our free and democratic society.

We criminal lawyers feel like the proverbial voice in the wilderness, and we wonder if anybody is listening. Those are all the remarks I have at the moment.

**The Chair:** Thank you very much for your presentation. That allows us approximately three minutes per caucus, and we begin with the government members.

**Mr Martiniuk:** We heard this morning from one of the presenters that, especially in isolated areas, there was a tendency to plea bargain or plead individuals guilty to get it over with. You've said something similar. I don't want to put words in your mouth, but you seem to indicate that because of the fee structure, a lawyer, who has a duty to defend his client, would tend to plead the person guilty for mercenary reasons. Is that stating fairly what you said?

**Mr Montemuro:** First of all, it's simply a fact I'm referring to. I don't know how it works, but it's there. The fact is that two thirds of the fee is paid for a guilty plea and there is a huge proportion of guilty pleas. Along with the pretrial, which has allowed them to find the middle ground, and the crown's own — as I mentioned, they've got their numbers game. They need convictions. They'll



almost give the store away in some cases in sentencing in order to get a conviction.

It's not the mercenary aspect of the lawyer; it's the fact that he just doesn't have the resources to go to trial. A trial doesn't take one third more work. Once he's on the record and committed to a trial, he's got to go through with it. First of all, how is he going to be paid for his work? What about the other resources he needs in terms of forensic experts to balance the crown's access to resources?

Most of the lawyers I know, except for a few dump truckers, which I'm sure you've all heard about, are honest people who are trying to do the best for their clients. The fact is that they just cannot do it. I don't know exactly what the mechanism is. I just throw that fact out for you. If you think there's a natural law that that many people plead guilty, I think you have to look at all the factors that may go into that. I'm not saying that any lawyer sells his clients down the river, but there is the fact that you're paying them two thirds of what they're going to be paid if they plead them guilty and one third more to do a trial which is going to take 10 times more work. There's just that pressure.

**Mr Martiniuk:** Thank you for clarifying that. I practised law for 30 years, and I would hate to think I practised in a profession that pleaded people guilty for mercenary reasons.

**Mr Montemuro:** Absolutely not.

**Mr Martiniuk:** Thank you very much for clarifying that. I have no further questions.

**Ms Castrilli:** I have one question and my colleague will ask one as well, if there's time.

I'd like to focus on another issue, but I want to pick up on what Mr Martiniuk just asked you. The fact is, and we've been dealing with this in the Legislature for some time, that there is a tendency to plea bargain. It has to do with a lot of factors. As you are probably well aware, a crown attorney report came out not too long ago that said they have no time for the many cases that clog up the courts for all kinds of reasons, including that there is no representation for plaintiffs and accused in the courts. It's not a question of the dishonesty of the lawyer; it's a question of adequately funding the system.

The question I want to put to you has to do with section 43 of the act, which you may have had a look at. It says something to the effect that it is incumbent on the lawyers to report a client who they believe may have misrepresented the facts with respect to his financial need. I wonder how you feel about that and if that is a difficult position for a lawyer to be in, and if it breaches the confidentiality between a lawyer and a client.

**Mr Montemuro:** It's not a new problem. I think that problem was there in the old legislation, and it's always been a bit of a bugbear with lawyers about their duty of confidentiality and solicitor-client privilege and their duty under the act to inform if something comes to their attention that the person may be defrauding the system. I really don't have any comments on that and I don't know what I would do if faced with that sort of dilemma.

**Mr Cleghorn:** This has existed ever since I began practising and taking legal aid certificates in 1984. The only thing about it was that we weren't aware of exactly what the individual had told legal aid in terms of their financial eligibility. So to report a change was one thing, if they won a lottery or something to that effect, but it was quite another if we thought they might have misrepresented themselves. But it's always been our obligation as solicitors. In effect, we had our clients, but the legal aid plan was also our client in the sense, and we had the obligation to make the plan aware of whether somebody was or was not eligible.

**Ms Castrilli:** If you read the section, it goes a little beyond that. It makes you, in effect, obliged to be a snitch, and I wonder how that squares with your responsibility to protect your client. Has it been a problem for you?

**Mr Cleghorn:** No. I can honestly say that I have never had to contact the legal aid plan because I was concerned about that particular thing occurring.

**The Chair:** We now move to the third party.

**Mr Kormos:** If you take a look at subsections 65(5) and (6), one guarantees, legislatively, stable funding for the clinic program for three years and the second guarantees stable funding for refugee immigration law for two years. Because there's no reference to refugee law, we know that means the government is abandoning any support of refugee law. But the legislation including those two subsections, we're then told by the Attorney General that we must rely only on his promise of stable gross funding for the whole legal aid plan over the course of three years. I've pushed and pressed the Attorney General to put that into the legislation; in other words, if you really mean it, put it in the bill. Why do you think the government won't legislate its commitment to stable funding for the overall plan for a period of three years?

**Mr Montemuro:** My impression in reading the whole thing is that it's so open-ended that it allows the government to do whatever it feels it wants to do, and I suppose what its number crunchers tell them will be the cheapest thing to do and also probably dovetails with some of its plans with respect to the other initiatives in the justice system, victims' rights and that sort of thing. I think it's a very dangerous situation to be in.

**Mr Kormos:** The AG and I go back a way, to before he was AG and even before he was an MPP, and I have a hard time just taking his word for it. I'd far sooner see it in the legislation.

You know that public support for advocates of a publicly funded legal aid plan is not part of the mainstream of public thought.

**Mr Montemuro:** Absolutely.

**Mr Cleghorn:** It's certainly part of the lawyers' thought.

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**Mr Kormos:** You also know what the public perspective — they publish surveys and reports annually of the stature of various professions —

**Mr Montemuro:** They hate lawyers and criminals.

**Mr Kormos:** Lawyers, criminals and politicians.

Having said that and acknowledging that as the reality, my fear is that the government is exploiting that anathema, especially the high-profile criminal defences of horrific crimes that have cost considerable amounts of money to defend, almost inevitably unsuccessfully. Nonetheless, you and I understand why it's important to have those defences. What's the point to make with the public? What are you or I or others who are advocates of a publicly funded legal aid plan to say to the public to foster support for our position that admittedly isn't there now?

**Mr Montemuro:** The presumption of innocence. It's the rock bottom of our justice system, and if you really unpack it and analyze what it involves, I think it involves adequately funding legal aid and it involves again in some of the moves — and I don't mean to be politically incorrect about victims' rights in the justice system, but some of the holus-bolus approach to it is I think eroding the presumption of innocence. That is a cornerstone, and I think from that you can analyze most of the approaches you would take and find out whether they're going to be adequate, because anything that erodes it is wrong.

**The Chair:** Thank you very much for your presentation. We very much appreciate it.

#### PERSONS UNITED FOR SELF-HELP IN NORTHWESTERN ONTARIO

**The Chair:** Would the representatives of Persons United for Self-Help in Northwestern Ontario come forward and identify yourselves for Hansard.

**Mrs Marilyn Warf:** My name is Marilyn Warf, regional director of Persons United for Self-Help in Northwestern Ontario Inc, often known as PUSH Northwest, a 100% consumer-driven organization of persons with mobility, hearing, vision, psychiatric, developmental, neurological and non-visible disabilities and seniors who work together to address issues that impact directly on their lives, rights and freedoms. PUSH Northwest and its community-based Disabled Alliance Network groups collectively represent consumers in the geographic area of northwestern Ontario and the Nishnawbe-Aski Nation.

Thank you for the opportunity to address the standing committee on administration of justice regarding Bill 68.

We have no concerns about the framework for the provision of legal aid services in Ontario or the creation of a corporation to establish the operating system for Legal Aid Ontario as proposed in Bill 68. The purpose of this presentation is to influence the policies and priorities that will be developed by the new corporation regarding the delivery of legal aid in Ontario.

**Cost of disability:** Many persons with disabilities and seniors are low-income individuals who must rely on legal aid as their only access to the justice system. Yet many persons with disabilities have difficulty accessing legal aid or are denied eligibility due to barriers within the system.

Of primary concern is the means testing for eligibility for legal aid assistance. No consideration is given to persons with disabilities and seniors regarding their cost of disability. Neither is there consideration of the value of

assets based on accommodation due to disability. For example, many persons with disabilities and seniors pay a high percentage of their income for costs directly associated with their disability that are not covered under any funding program, such as thousands of dollars towards the cost of a mobility device or modified vehicle. There must be consideration for these costs over and above the cost-of-living allowances, because they greatly reduce a person's actual discretionary funds and level of ability to pay for legal services.

When considering assets, a modified vehicle may have a value of \$50,000, but the base cost of the vehicle is less than half that value. It is the addition of the lifting device and hand controls that increases the price and is a direct result of accommodation for the disability. The person with a disability also pays higher insurance rates based on vehicle replacement value. The high-priced vehicle is not a luxury; it is a necessity. The same is true for a person's residence. How much value is the actual residence and how much is directly related to the accommodation in the home?

The economic impact of disability in relation to income must be considered when reviewing eligibility criteria for legal aid under the new corporation. By not taking these costs into consideration, many persons with disabilities and seniors will be denied legal aid eligibility when in fact that is the only way that access to justice would be available to them.

Under the same premise, the cost of disability must be considered any time there are persons with disabilities involved in negotiating financial supports for a custodial parent and/or a dependent child. The cost of disability must be factored into the equation on an individual basis. Cost of disability is not currently considered in the grid used to calculate the provision of financial support under family law. This is a critical issue that must be addressed.

**Legal clinics:** It is important for PUSH Northwest to go on record as fully supporting the continued funding for legal clinics and their mandate as well as their active involvement in law reform and community development. Legal aid clinics are critical for equal access to legal aid services and the justice system. It is imperative that the board of Legal Aid Ontario allow the clinics to assess and set priorities regarding needs at the community level and give them the autonomy to meet those needs. If legal aid is meant to be responsive, provide access to the justice system and meet the needs of low-income and disadvantaged populations, then the board must rely heavily on the input of the clinics for planning and delivery of legal aid in Ontario. Clinics are the ones with hands-on experience at the grassroots level.

The board of the new corporation must include representatives that have extensive knowledge in areas of law practised by legal clinics. Understanding of the legal clinic's mandate and function and its invaluable role must be strongly supported by the corporation to enable low-income and disadvantaged populations to have access to the justice system.



PUSH Northwest is a member of ARCH, a legal resource centre for persons with disabilities. ARCH has continued to be a reliable and responsive source of information and interpretation of legislation and policy changes. Without this resource, we would be less able to keep persons with a disability informed of changes which directly impact their lives, rights and freedoms. ARCH also works to establish precedents for the benefit and protection of all persons with disabilities. To our knowledge, ARCH is the only legal clinic in Canada dedicated to addressing disability issues.

We also work directly with Kinna-Aweya Legal Clinic in Thunder Bay as community resource on disability issues and as a consistently reliable source of advice and support as we work with individuals and address disability issues in northwestern Ontario. Both of these clinics and all legal clinics across the province are invaluable for persons with disabilities and seniors to ensure that they have access to the justice system.

**Legal aid certificates:** Many professionals and service providers in the legal system do not have practical knowledge regarding disability issues and, acknowledging their lack of knowledge on the issues, are reluctant to take legal aid certificates. This is a disadvantage for consumers who obtain legal aid certificates and then try to find a professional in private practice who has extensive knowledge in areas such as the provision of special education, assistive devices program and income support.

It would be a benefit for persons with a disability to be able to access lawyers, using legal aid certificates, who have the level of expertise regarding disability issues that is available at the legal clinics. Staff at the legal clinics could not possibly handle more work than they already have, but, from a consumer perspective, consideration should be given to expanding the staff complement at the legal clinics so that there is a team of lawyers who can be retained, using legal aid certificates, who could immediately address issues because they have the background knowledge. Discussion with the clinics would determine whether or not this suggestion would be feasible from their perspective.

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Accessing legal aid certificates creates an opportunity to seek legal aid counsel, but does not always mean full access to the justice system. For example, a parent pursuing appropriate special education assistance for a disabled child and following the process through to the tribunal stage often cannot find a knowledgeable lawyer, will end up with costs related to retaining a lawyer over and above the legal aid provisions and will have to assume the cost of paying a per diem and travel for witnesses summoned etc. Often, the end result is the inability to resolve the case due to the lack of funds for the entire process. In this situation, the board of education has the resources to complete the process and the low-income individual does not. Barriers to equitable access are inherent in the system and we are requesting that these be addressed as part of the restructuring.

The process of how legal aid certificates are assigned needs to be closely examined. Currently, 84% of the certificates are used for criminal law. While we agree that all persons should have access to the justice system, the heavily weighted support for criminal law means less equity in other areas such as family law, social assistance law, education law, employment law, landlord and tenant law etc. We are requesting that more consideration be given to cases involving persons who are victims or in vulnerable situations, particularly when children are involved; for example, a person trying to leave an abusive relationship and obtain financial support for children, or a parent fighting for adequate educational supports for a disabled child, or a person wrongfully dismissed from employment due to having a disability. The list is endless. The current political climate in Ontario has exacerbated these situations as more and more people fall through the cracks of the systems that are supposedly put in place to protect and support them. These are cases that must have a priority in the assignment of legal aid certificates.

**Poverty and disability law:** For those who do not believe there is a need for poverty and disability law, we can give you scenario after scenario to prove the need of those who must rely on legal aid to access the justice system. For those who do not believe legal aid should support individuals who challenge the laws and policies of the government, we ask: Which is worse, abandoning people who are most vulnerable or acknowledging that laws and policies do not meet the needs of all people? Legal aid must be available in all areas where access to justice is required.

**Accommodation for persons with disabilities:** It is imperative that the provision of accommodation for persons with disabilities under legal aid be maintained to ensure that all persons can access the justice system when using either legal clinic services or legal aid certificates. Often, choice of attorney is limited due to lack of physical accessibility to the law offices. There is also a need for sensitization training for lawyers, paralegals, service providers, mediators and duty counsels to increase their understanding of disability issues and enable them to relate more appropriately to persons with disabilities. There is a high degree of sensitivity and knowledge within the legal clinics which must now be extended through the wider justice system.

One other area that requires enhancement is the supports in the courts for persons with disabilities such as mental health workers and a victim/witness program that includes services for consumers. Although this may be considered outside the proposed restructuring, it is an area that is not meeting the needs of persons trying to access the justice system and must be identified as a gap in the overall delivery of service.

Hopefully, this information will be given full consideration by the corporation. Throughout the restructuring of the legal aid and in the future, there must be a conscious effort to look at systems, policies and procedures to ensure that they include persons with disabilities and seniors who make up 17% and 13% of the population, respectively. If



**PUSH Northwest** can be of assistance with any aspect of this development, we would be pleased to provide the board with any information required.

Thank you for your attention to this presentation.

**The Chair:** Thank you very much for your presentation. That affords us just over two minutes per caucus and we begin with the official opposition.

**Ms Castrilli:** Thank you very much for your presentation and for bringing forth a unique point of view. I wonder if you might elaborate on a comment that you made, that the particular client group that you see has very special needs and there have to be some measures put in place to ensure that they get a fair share of certificates if necessary. Do you have any ideas as to what we might do with respect to that?

**Mrs Warf:** I don't pretend to be an authority on the allocation of legal aid certificates but I know, in working with the population of Ontario across the board, not just people with disabilities, there is a greater need to look at the allocation of legal aid certificates for family law, particularly women leaving abusive situations looking for supports for kids. We've got a huge problem with low-income families and children. Child poverty is a huge issue and until you address the family law that relates directly to those situations, we're not going to start addressing those issues. I think this should be, I don't want to say a priority, but certainly attention should be paid to that particular segment.

In situations where people have been discriminated against, it's not appropriate to ask people to go through human rights. You need legal aid and you need it immediately to be able to get through a situation where you've lost your job because of disability. You know it has happened that way, and the faster you can address that the faster you may be reinstated or compensated. We can't allow people to fall through the cracks because we're not allocating those certificates quickly enough.

**Ms Castrilli:** Are you advocating some kind of division of certificates? Is that what you're saying? At the moment, 83%, as you point out, goes to criminal —

**Mrs Warf:** Eighty-four per cent to criminal law and, just for background, I think 90% or something of those are men because when you look at the system the worst thing, perhaps, when they looked at the system originally was saying, "You don't want anybody to spend a night in jail." But if you ask a woman in particular the worst thing that can happen, it's that, "I have to have myself and my children in an abusive situation" or "Somebody takes my kids away."

I think we need to look at what the basis for the application for the certificates is: Are they, in fact, victims? Are they, in fact, vulnerable? Or are they, in fact, the perpetrators? I think that the way they're allocated doesn't have enough thought process in it. We just hand them out as they come through for application, and I think it needs to be really looked at.

**Ms Castrilli:** Would you agree that part of the problem may be adequate funding?

**The Chair:** Thank you, Ms Castrilli. We now move to the third party.

**Mrs Warf:** Adequate funding would certainly —

**The Chair:** Thank you, Mr Kormos.

**Mr Kormos:** It's interesting because Mr Montemuro and Mr Cleghorn were here from Thunder Bay Law Association just before you and I was asking Mr Montemuro — I said: "Legal aid is not a popular thing out there with the general public, the fact that their tax dollars are being spent on legal aid. Let's face it, it's not a popular thing. How do you market it to people? How do we convince people it's a worthwhile investment?" and Mr Montemuro replied, "The presumption of innocence." He's not here any more, but I assume he'd say that means that nobody should have to spend even one day in jail until they've been proven guilty. It really comes down to adequacy of funding and not creating competing classes within the system. Isn't that the follow-up to what Ms Castrilli asked?

**Mrs Warf:** I think that's true, but I think her question was more towards, who is using these certificates? I think one thing to look at, if we're looking at how to make the general population more receptive to the idea of legal aid, it's because there are a lot of families and there are a lot of individuals who are low-income and very vulnerable, in disadvantaged populations who don't have access otherwise. We're not looking, necessarily, at criminal law. I think maybe partly the perception of the community is that we're talking about criminal law only and we're not. Did I misunderstand what you were saying?

**Mr Kormos:** No, no. We haven't got very much time at all. In your dialogue, you talk about persons with disabilities and seniors. That strikes me as phrasing that was the result of some sort of debate somewhere. Why do you distinguish seniors? Not all seniors have disabilities but the aging process is more inclined to impose disabilities on all of us. Why isn't PUSH just saying people with disabilities?

**Mrs Warf:** That's out of respect for people who are seniors, who prefer to be just referred to as seniors because they really don't have a disability; they're just getting older. They say: "Oh no, dear, I don't have a disability. I just can't hear out of this ear any more."

**Mr Kormos:** Exactly. As I get into my 40s, middle age, my hearing is diminishing and I consider that —

**The Chair:** Thank you, Mr Kormos.

**Mr Kormos:** Oh no, I consider that a disability.

**The Chair:** We now move to the government members.

**Mrs Lillian Ross (Hamilton West):** Thank you for your presentation. I was quite interested. I thought most of your concerns that you have expressed here, correct me if I'm wrong, but according to the act the priorities of the legal aid plan would be set by the corporation. So when you talk about, for example, 84% goes to criminal law, am I wrong in saying that the corporation would determine how they would set their priorities and where they would put their funding?



**Mrs Warf:** We're saying, when you're looking at how you allocate the legal aid certificates and what you set as priorities, to remember that not everything that is critical out there is criminal law. I think we sort of look at that because we read the paper and we see what's happening out there and you don't put the weight that should be on family law and social law. It doesn't get the same kind of credibility and it needs probably a priority particularly, like I said, if the person is in an abusive situation, they are a victim, or they are in a very vulnerable situation and need immediate assistance.

**Mrs Ross:** You also made another comment which spoke to the fact that, for example, when you applied for a legal aid certificate, certificates were issued — I'm not sure if I misunderstood you — based on the order they come in. Say you're number 1 on the list. You get your legal aid certificate, but maybe number 5 requires that certificate or has a more meaningful reason for applying for that legal aid certificate. Do you understand what I'm saying?

**Mrs Warf:** Not particularly.

**Mrs Ross:** You felt that the way they were allocated was perhaps not appropriate.

**Mrs Warf:** I think we need to look at that entire system and the way they're allocated. Even if you issue a legal aid certificate, then it takes a person sometimes a long time to find a lawyer who will accept it. They've acknowledged their lack of practical knowledge in the

situation you're talking about because not a lot of lawyers focus on issues relating to disability. There are a lot of situations and a lot of scenarios that need to be examined and that's the whole idea behind us coming forward with this presentation.

It does not have a lot of merit when people sit at the table to discuss legal aid or the allocation of certificates, and we're saying sit down and take a look at this information when you do discuss those issues because there are a whole lot of people out there who are not getting the kind of legal assistance they require and they're not getting it because they can't afford it or the legal aid system has barriers in the system that prevent them from accessing certificates or finding qualified lawyers to address their issues.

**The Chair:** Thank you very much for coming forward today. We very much appreciate your taking the time.

At this time, we're going to take about a five-minute recess just to determine the status of the last presenter, if they are showing up or where they are at this time. We'll recess for five minutes.

*The committee recessed from 1443 to 1448.*

**The Chair:** Seeing that our last presenter has not communicated whether they're available — we have tried to reach the individual and we cannot get any response at all — this committee is adjourned till 10 am tomorrow.

*The committee adjourned at 1449.*

## **STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE**

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## **Legislative Assembly of Ontario**

Second Session, 36<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Deuxième session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Tuesday 17 November 1998

# **Journal des débats (Hansard)**

Mardi 17 novembre 1998

## **Standing committee on administration of justice**

Legal Aid Services Act, 1998

## **Comité permanent de l'administration de la justice**

Loi de 1998 sur les services  
d'aide juridique



Chair: Jerry J. Ouellette  
Clerk: Tonia Grannum

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Tuesday 17 November 1998

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Mardi 17 novembre 1998

*The committee met at 1006 in room 151.*

## LEGAL AID SERVICES ACT, 1998

## LOI DE 1998

## SUR LES SERVICES D'AIDE JURIDIQUE

Consideration of Bill 68, An Act to incorporate Legal Aid Ontario and to create the framework for the provision of legal aid services in Ontario, to amend the Legal Aid Act and to make consequential amendments to other Acts /  
Projet de loi 68, Loi constituant en personne morale Aide juridique Ontario, établissant le cadre de la prestation des services d'aide juridique en Ontario, modifiant la Loi sur l'aide juridique et apportant des modifications corrélatives à d'autres lois.

**The Vice-Chair (Mr E.J. Douglas Rollins):** All right, if we could have the standing committee on administration of justice come to order.

## MINISTRY BRIEFING

**The Vice-Chair:** Our first presentation will be a technical briefing from Nancy Austin, director of the legal aid project. You'll make your presentation and then we'll divide the remaining time of the hour up between the three parties for comments.

**Ms Nancy Austin:** I propose to do a brief summary of the 10 parts of the act and then go through in detail, highlighting the areas which we have received comments on from various organizations.

Part I of the act sets out the purposes of the act and the definitions.

Part II establishes the corporation Legal Aid Ontario, the transitional board, and requires the law society to assist in the transition from the Ontario legal aid plan to the new Legal Aid Ontario.

Part III sets out the services which can be provided by Legal Aid Ontario and how those services can be provided, the eligibility for services and details of clinic funding and operation.

Part IV deals with copayment provisions and cost-recovery provisions. That is to say, it will allow the corporation to require legal aid applicants to contribute to the cost of their legal aid services if they have the financial means to do so, and it will allow the corporation

to recover costs, either court costs awarded or costs pursuant to the copayment agreement.

Part V sets out the corporation's powers, and that basically allows it to operate. It will have the powers of a natural person in a body corporate.

Part VI sets out provisions to allow for a temporary administrator should the board of directors of the plan fail to perform their duties appropriately. The section would require the court to make that determination, not the government, and it would be a temporary administration or trusteeship subject to extensions, again decided by the court.

Part VII of the bill sets out general protections for the board and the staff of the agency in pursuing its duties and also sets out how clients' privacy will be protected.

Part VIII: Our amendments to the current Legal Aid Act will remove the 5% clawback that lawyers to date have been paying on legal aid certificates and will remove the lawyers' levy, which is the 50% of administrative costs that the lawyers have been contributing to legal aid while they have been running the plan.

Part IX deals with consequential amendments, mainly changing the name of the act from the Legal Aid Act to the Legal Aid Services Act, 1998, in other statutes in which the Legal Aid Act is referred to.

Part X lists the dates that certain sections of the act come into force.

I will now start with part I. The purposes of the act are for the most part those outlined by Professor McCamus in the Ontario Legal Aid Review which was released in September 1997. The main purpose of the act is "to promote access to justice throughout Ontario for low-income individuals by...

"(a) providing consistently high quality legal aid services in a cost-effective...manner to low-income individuals throughout Ontario;

"(b) encouraging and facilitating flexibility and innovation in the provision of legal aid services, while recognizing the private bar as the foundation for the provision of legal aid services in the areas of criminal law and family law and clinics as the foundation for the provision of legal aid services in the area of clinic law."

It goes on to ensure that gaps in the system are addressed, that the needs of legal aid applicants in the province are addressed, and it states that the corporation will be independent of the government of Ontario, while



being a schedule 3 agency, accountable financially to the government.

The definition section: For the most part the definitions are the same ones used in the Legal Aid Act or used in practice, if not specifically defined in the Legal Aid Act. Some new definitions are "clinic law," which basically identifies the previous poverty law, and "person responsible," which identifies current practice of when another person is responsible to assist a person in contributing to copayment in legal aid.

Section 4 sets out the objects of the corporation. They match the provisions of section 1, which set out the purpose. Again, it's establishing and administering a cost-effective and efficient system for high-quality legal aid services; establishing priorities and policies so that those services can be provided; and facilitating coordination among the different methods of service. That would allow Legal Aid Ontario to work with other service-providers to ensure that there is a seamless way to apply for legal aid, receive legal aid and receive other services which could complement legal aid services, and Legal Aid Ontario is also to advise the Attorney General on all aspects of legal aid services in the province of Ontario.

In section 3 — slightly out of order; sorry — the key is that the corporation is established and that it is not a crown agent. This is to ensure the independence of the corporation while ensuring it's accountable for public funds.

Section 5 sets out the qualifications of the board of directors and requires them to have staggered terms so that the board will have a continuity of knowledge at any given point in time.

**Mr Peter Kormos (Welland-Thorold):** Point of order, Chair. My apologies to you, Ms Austin.

Chair, I've read the bill. I've taken advantage of ministry briefings by Ms Austin and her colleague. I know the government members have read the bill and have been similarly briefed. I know Ms Castrilli has read the bill and has similarly been briefed. I'm wondering if we can get down to questions to Ms Austin and members' statements and responses. It seems to me to be a waste of Ms Austin's time for her to be going through this bill in a manner which she has already done with any conscientious member of the committee because they've had the briefing with her, certainly any government member, because undoubtedly they've read the bill and can similarly understand what Ms Austin is speaking of. Perhaps it would be more relevant to pose specific questions or make specific comments for Ms Austin to respond to. I'm simply talking about a more efficient use of our time.

**The Vice-Chair:** She has been afforded the chance to go ahead with the 20 minutes, even though you may not agree with her presentation.

**Mr Kormos:** No, the presentation is fine. I have no quarrel with it.

**The Vice-Chair:** We afforded her the 20 minutes. I think we need to give her that length of time.

**Mr Kormos:** She's not a member of the Legislature; she's not a member of the committee.

**The Vice-Chair:** I know, but with all due respect, this is what the briefing is for. It's her technical briefing that she's giving us. Whether you agree with it or have known it before, it still is her ability to do that.

**Ms Annamarie Castrilli (Downsview):** Mr Chair, let me say we're now in committee. This bill has been through first reading, through second reading. We have had ample debate in the Legislature to date. We've had numerous briefings. We've heard the Attorney General on this bill. We've heard the parliamentary assistant. We've heard many people who have commented on the substance and the technical aspects of the bill as well.

I wonder, in the interests of getting to the meat of the matter, which is to discuss the points that may be contentious in the legislation and not wasting everyone's time with reciting what we already know, whether it would be appropriate to seek unanimous consent to dispense with the technical briefing and proceed to a more substantive discussion of the bill.

**The Vice-Chair:** My ruling is that she has been allowed the time to make her presentation. We will continue with that.

**Ms Castrilli:** But I've sought unanimous consent, Chair.

**The Vice-Chair:** Is there unanimous consent?

**Mr Gerry Martiniuk (Cambridge):** No, we've accepted the report. This is a briefing period pursuant to this committee's decision. It should be carried on.

**Mr Kormos:** I didn't support that report.

**The Vice-Chair:** Would you please continue, Ms Austin.

**Ms Austin:** Section 7 of the bill deals with setting up advisory committees which would advise the board of Legal Aid Ontario. They are mandated in the areas of criminal, family and clinic law, but the board has the power to set up committees for any other area of law in which it feels the need to be advised. The Lieutenant Governor in Council can also require other committees to be set up if it finds it necessary.

Section 8 sets up the audit committee and the clinic committee. Those would be comprised of members of the board of LAO.

Sections 9 and 10 set up the transitional board, which will run Legal Aid Ontario from royal assent of the bill through to March 31, 1999, following which the transitional board will continue until the full board of Legal Aid Ontario is named. The full board of Legal Aid Ontario can be named as early as April 1, 1999. During the period from royal assent of the bill until March 31, the law society runs the operational day-to-day legal aid plan. Throughout this, the law society is to assist in the transition and ensuring that services continue to be provided.

Under Part III of the bill, services, sections 12 and 13 establish the priorities and the factors that Legal Aid Ontario must consider when setting the priorities for provision of services. Section 13 sets out the areas of law in which services can be provided. It mandates the corporation to provide legal aid services in the areas of criminal law, family law, clinic and mental health law, but

Legal Aid Ontario has the discretion to provide legal services in any other area of civil law unless a regulation states it may not.

#### 1020

Section 14 lists the ways in which services can be provided. It is not an exclusive list. They can be provided by way of certificate, through lawyers, through clinics, authorization of other service-providers, establishing legal aid staff offices etc.

Sections 15 through 18 basically set out that there will be areas of the province in which legal aid will be provided, and set out eligibility for provision of legal services.

Sections 19 through 22 deal with staff offices, duty counsel, student legal aid societies and provision of certificates. It sets out the details for each of those areas of provision of services. That basically follows current practice.

Again, sections 24 through 27 follow current practice for applying for a certificate, issuing a certificate, provisional certificates and group certificates.

Sections 33 through 39 deal with the role of clinics in the system and monitoring of clinics by Legal Aid Ontario. Clinics are clearly identified in this bill as a major method of providing clinic law services, and later on in the bill you will note that their funding is guaranteed at current levels for the first three years of operation of Legal Aid Ontario.

Sections 40 through 49 deal with cost recovery and collection of costs. Again, they follow current practice in the plan.

In part V, the corporation is provided with the powers of a natural person. That gives it the ability to contract to hire employees, fire employees, enter into leases, enter into contracts for provision of other services. One qualification on that is, when investing, it must follow the guidelines for a prudent investor, similar to that under the Trustee Act.

Section 57 allows it to enter into agreements with other governments to co-operate in providing legal aid services and access to information. Again, that mimics the current practice and allows it to set fees for non-legal services. That would be publicly legal education and any non-legal services provided.

Section 59 sets out the duties of the board for setting policy directions, all within the financial resources of the corporation. The corporation is expected to live within its financial means.

Sections 72 through 80 outline the powers of the trustee. The trustee can only be appointed by order of the court if the court is satisfied that the appointment is in the public interest and is needed to ensure the continued and effective provision of legal aid services.

The other sections that I will just flag for you — the rest is mainly technical. Section 81 provides that the French Language Services Act, which does not currently apply to the Ontario legal aid plan, will apply to Legal Aid Ontario as of April 1, 1999.

Section 91 ensures that the corporation will set up a quality assurance program — this is read in conjunction with section 59 — to ensure a high level of service is provided. It's a management tool that is necessary for the corporation in that section, and also protects solicitor-client privilege.

Section 95 sets out the offences under the act, and section 96 lists the regulatory powers which, although set out throughout the act, are gathered in one place at the end for ease of reference.

That's a summary of the bill. We have received some suggestions from different parties on ways that the bill could be changed, as has this committee.

**The Vice-Chair:** Thank you very much. We'll start now with the opposition for a period of approximately 20 minutes, if they use that time.

**Ms Castrilli:** We've already had one day of hearings on this bill in Thunder Bay yesterday, and it's been interesting to hear what ordinary people have to say, what practitioners have to say, what people who work in the area have to say with respect to this legislation. It won't surprise you that their concerns echo what we have raised in the House with respect to this bill.

Let me start with some of the positive aspects of this bill. It's obvious that legal aid needed some restructuring. The profession and certainly the public have asked for a redimensioning of legal aid. There have been difficulties in terms of funding, which has been decreased by successive governments. There have been, certainly, difficulties with respect to getting legal aid certificates. We've seen that in the last year alone some 50% of certificates have been issued. There's been a cut of 50%, which has really been quite detrimental to people.

There needed to be something, and one of the things that was suggested was the creation of a new entity that would be at arm's length from government and certainly from the legal profession, which was accused of having some conflict in administering the legal aid plan. So we have the formation of a new corporation, Legal Aid Ontario.

As far as that goes, it's a good concept. What troubles us with respect to the legislation and the corporation, and what has been highlighted in the comments so far from the people that we've heard, is that what we've really erected is a shell, and until we know how that shell is going to be staffed, how that shell is going to be funded, it remains just that, a shell.

You may recall that Professor McCamus, in his introduction to the report that he was commissioned to make, indicated that the legal aid system must provide certain guarantees for people at the lower end of the scale in order to be able to provide equal justice for everyone. He sets out at great length some of the goals of the legal aid system, which Ms Austin has outlined for us. But in addition he states in his report very clearly that in return the government must commit itself to ensuring adequate multi-year stable funding for the system. Quite frankly, there's nothing in this legislation that does that. In fact, it's quite the contrary.



The sections set out in the act with respect to clinics only commit the government to three years at best. The funding, as you know, is frozen at current levels, which is really quite difficult for people to accept when you understand that the need to access justice is increasing, particularly in the face of other cutbacks that we've seen in the area of justice. I refer to things like the criminal compensation board, which has been decreased by some \$1.5 million over the term of this government. I refer to the fact that the police complaints tribunal was disbanded, which was an easy way for people to access justice. Now they have to essentially go to the police. If they don't get justice, they have to go to the courts. I could give you a litany of those. In fact, I've listed some of those during debates in the House, so I will not use my 20 minutes to do that.

1030

People are concerned because we do not see a decrease in the need of people in a whole host of areas: in family law, for instance, where Professor McCamus indicated in his report we have some 67% of litigants who go unrepresented, mostly women and children, because they can't get legal aid certificates and they can't get lawyers and they can't afford to pay lawyers on their own.

We see that there are serious needs in the area of landlord and tenant, for instance, and again it's lower-income people who are most affected. That becomes all the more critical with what's happening with respect to rent control in this province.

There is no evidence that the need for legal aid is going to go down. All the indications are that it's going to go up. When you have a piece of legislation that doesn't deal with the funding issue, that doesn't deal with the multi-year stable funding, which doesn't deal with even adequate funding, we have some very serious problems.

When you add to that the omissions in this legislation, those areas of law which will not be covered by legal aid, the problem becomes even more compounded. We've heard from environmental groups, for instance, and it's absurd, that you couldn't get environmental law dealt with under legal aid. There was at least a discretionary ability to be able to do that under the old legislation. That's been removed. Landlord and tenant doesn't appear. There are very serious concerns about what legal aid will and will not fund, questions that remain to be answered, and I'm sure that over the course of the next few days we will hear from the public on these omissions.

Another area that I think is extremely worrisome, for not just us in the opposition but we heard evidence yesterday as well of this, is the appointment process to this board. There's a real feeling out there that the government may appoint individuals to this board who reflect its ideological bent and that that ideological bent may in fact mean the demise of the clinic system in Ontario. So there's an issue as to how people are appointed to the board. Will they reflect not just the geographic diversity of Ontario, which is stated in the bill, but the demographic diversity?

We heard from native women's groups yesterday saying there are some real problems in terms of native women and how we deal with them in this province. What can they expect from a corporation that deals with legal aid? Will it be receptive to their ideas? Will their concerns be represented? I think those are very legitimate questions as to how the process of appointment will take place, who will be appointed to these boards and what the real agenda is with respect to appointments.

In case that appears a trifle partisan, it's not just the opposition saying it, as I've said before. It's in fact the public who are concerned because they've seen other appointments that have been made and they have not always been reflective of a broader agenda.

There's another issue that I think is also particularly worrisome. It's been raised with respect to other justice bills and here we go again. In this particular piece of legislation the French Language Services Act is excluded. I thought we had fought that debate before, that we were not going to penalize individuals who speak French in this province, that whatever access there is to the courts ought to be equal for both francophones and anglophones in this province. I'm sure we will hear from l'Association des juristes d'expression française de l'Ontario later on with respect to this issue, but I wonder, given the debates that we've had around this issue, why we find again in this legislation that the French Language Services Act is excluded from application.

Chair, I don't know how much time I have left, but the issues that we have to deal with with respect to this piece of legislation are substantive. They revolve around funding; they revolve around the stability of that funding; they revolve around what areas of law will be excluded from the application of the legal aid certificates; they revolve around the appointment process, and with it comes the whole notion of accountability. Certainly in my view and in the view of many, the accountability ought to be to the Legislature, not necessarily just to the Attorney General. There of course is an issue, as I've pointed out, of French language, which is extremely critical.

Do I still have time?

**The Chair (Mr Jerry J. Ouellette):** Yes, you have about 10½ minutes.

**Ms Castrilli:** Oh, my. What I'd like to do with the time that's left then is put some of those issues to Ms Austin and ask for her comments.

**Ms Austin:** I made note as you were going through. If I miss any, please call my attention to them.

**Ms Castrilli:** Indeed.

**Ms Austin:** Your first comment was that the bill is a shell. That in a sense is true, but what any bill does is set out the structure in which, in this case, an independent corporation will operate. If you set out every single term and condition, the corporation would have very little left to decide. So what the bill does is it sets out the structure, it sets out the regulatory powers in section 96, both those of Legal Aid Ontario and those of the Lieutenant Governor in Council. Then it goes on and states specific powers given to the board, and the board can either

exercise those through policies, guidelines, an MOU with the government. There are many ways it could, but it allows the corporation to set its own priorities in accordance with the terms of the act and deliver services, again in accordance with the terms of the act, but it gives it the flexibility to do that.

One of the things we heard throughout was, "Don't make this so fixed that the corporation will not have a job to do," so that's what we have tried to accomplish in the act, and any more than that I can't comment.

You stated that there needs to be adequate multi-year stable funding. That has been in place under the MOU entered into between the NDP government and the Law Society of Upper Canada, and it has been honoured by this current government. This current government has stated in the House that there will be three-year stable funding at the 1998-99 provincial funding level, the first three years of the operation of Legal Aid Ontario.

**Ms Castrilli:** I understand what the legislation says and that this isn't something for you to answer, obviously.

**Ms Austin:** No.

**Ms Castrilli:** The reality is that the funding is hardly stable if it's only for three years and it's hardly adequate if it's frozen at current levels. But, as I say, that's not a political decision for you.

**Ms Austin:** I won't go there.

**Ms Castrilli:** I question as to whether that is adequate or stable or even multi-year, as Professor McCamus indicated.

**Ms Austin:** Now, section 65 does set out a mechanism for multi-year funding. It basically requires the corporation to set out a three-year budget in the estimates process. The first-year budget would be approved. In the second year, they would put forward a fourth year. So they would know during any three years what their anticipated budget would be and they have the ability to roll surpluses and deficits from year to year in section 65 of the act. So the mechanism is certainly in the bill.

You mentioned you were worried about clinics only being funded for three years. The clinic and clinic law itself is now a mandated service under the Legal Aid Services Act, 1998. There is a built-in base funding level at the current level, but it does not say that Legal Aid Ontario cannot fund at a higher level if that is how it sets its priorities and determines ways to provide services.

**Ms Castrilli:** It doesn't mandate increases either, according to inflation or anything else.

**Ms Austin:** No, it leaves it to Legal Aid Ontario. The way the bill is structured is to allow Legal Aid Ontario to operate as an independent agency within a financial envelope it is given, and certain protections are built into the act for clinics and —

**Ms Castrilli:** I appreciate that. The questions I'm raising are political. I agree with your interpretation. I think your interpretation, however, is a legal interpretation and there's certainly a great deal more that could be read into this.

1040

**Ms Austin:** Again, on the coverage areas, addressing only the legal aspect, there is the mandated coverage, but then the board of Legal Aid Ontario can set other priorities which could include landlord and tenant or other civil law. It's certainly not excluded. The definition is an inclusive one in the act.

On the issue of how people are appointed to the board, the structure is set out in the act and it's a political question as to how they are actually appointed.

Your comment on the French Language Services Act — I apologize. It is confusing in the act. It is written in the negative, but it is a positive obligation on the corporation to have the French-language services apply as of April 1, 1999, in section 81. The reason it reads the way it does, saying, "the French Language Services Act does not apply" is because Legal Aid Ontario comes into effect on royal assent, which is almost right away, and yet Legal Aid Ontario will not be operating the plan until April 1, 1999. The law society continues to operate the plan. The law society does not fall under the French Language Services Act, so this had to be phrased in the negative, that the French Language Services Act does not apply until April 1, 1999, at which point it does, because that's when Legal Aid Ontario starts operating the plan. It is worded in the negative but it is a positive obligation and the French Language Services Act does apply.

**Ms Castrilli:** My comments were to elicit precisely that response, because it is a difficult read in the act, and just for the record we'll be asking for much clearer language than what's in the legislation at the moment with respect to that provision.

**Ms Austin:** I believe that covered the points you raised unless you have others.

**Ms Castrilli:** No, you've answered them, thank you. It still leaves the political questions open.

**The Chair:** You still have about two minutes left.

**Ms Castrilli:** I'm going to defer. I'm anxious to hear our presenters. We started late, so I will defer to my colleague.

**The Chair:** We'll move to the third party.

**Mr Kormos:** Thank you, Ms Austin. Ms Austin, I have the highest regard for you. As I indicated earlier, you were so kind, with your colleague, to spend time with Ms Boyd and me going over the bill, and you've been available both during the course of legislative debate, as you sit in the wings, and during this committee to answer questions that I've had of you. Your answers to direct questions have been very forthright.

I'm not asking you to take any notes because it seems to me that, and again no disrespect, because you want to draw the line between what's political and what's not, but you don't want — well, you do. That was your response to Ms Castrilli.

**Ms Austin:** That's my job. I'm only here to —

**Mr Kormos:** I understand that, but I find, quite frankly, your refusal to draw some conclusions about the wording of the statute to be troublesome, not because it requires you to form a political conclusion but because



they are the inevitable conclusions. The issue is all about funding. The issue is all about whether or not this government — or quite frankly subsequent governments — is going to provide adequate funding so that a legal aid system can operate at any level of effectiveness here in Ontario.

The fact remains that this legislation does not provide for a minimum standard of legal aid. It doesn't. There's nothing in this bill which indicates what the minimum standard will be. Although it endorses the clinic and certificate system and mandates the corporation to provide legal aid services by any method that it considers appropriate, it goes on, and I'm referring to section 14, to talk about having regard to "the corporation's financial resources."

At the end of the day there is no minimum standard, Chair. Effectively, we could be left with some gutted legal aid clinics and no certificate system, because it's all conditional on the resources provided to the corporation. The corporation has no power to compel the provision of resources or even to access an independent body to make its case for adequate resources. Do you know what I'm saying? Any number of administrative agencies and commissions can supervise the adequacy of funding to a certain area of concern.

We've got a letter that has been filed with the clerk. It's from Wayne Woods in Hamilton; it's a written submission. It is typical of the broadest-based concerns out there about legal aid, either pre-Bill 68 or post-Bill 68. This gentleman is involved in family litigation and is talking about the difficulties that he's had with what appears to have been a succession of lawyers. Again, I don't dispute what he says, although it's only one side of the story. A succession of lawyers have billed legal aid in various amounts, but at the end of the day Mr Woods went to court on his own and is still awaiting a resolution of the matter. It's an issue involving what appears to be access.

The big shortcoming, the big deficiency — you people know it; it's been across the board. Criminal certificates: You heard from two criminal defence lawyers yesterday, talking about the inadequacy of funding if a criminal lawyer finds herself or himself involved in lengthy criminal litigation, or intricate or complex criminal litigation.

The deficiency has been across the board, but nowhere is it more acute than in the area of family law. The fact is, and that's what Mr Woods's letter confers, that a large number of family lawyers are unwilling and/or unable to effectively represent their clients in family litigation on the basis of the current tariffs in the legal aid system. That's the reality of it. We've seen, effectively, the delisting of services in legal aid in the area of family law. You've received these complaints in your constituency office. I know that, Chair, because we've received them in ours; all of us have. We've had these people come in, more often than not women.

We warned the Attorney General. For instance, when both opposition parties supported the family support guidelines, we warned the Attorney General at the time that this would put an enhanced load on the family courts

and on the bar — lawyers — and concurrently on legal aid, because there would be a whole whack of people wanting to access the courts to have their support orders revised, either as recipients of support or as payors of support. The system has failed those people.

We heard yesterday from women in a unique situation, in a remote part of northern Ontario, aboriginal native Canadian women, about the difficulties in accessing legal aid, obtaining an advocate's assistance, retaining a lawyer for women who are at risk, women who are in danger, along with their kids.

Let's note that this bill very specifically states that the private bar is the foundation for the provision of legal aid services in the areas of criminal and family law.

**Ms Austin:** It's the foundation.

**Mr Kormos:** Yes. Very specifically, it says that.

**Ms Austin:** Correct.

**Mr Kormos:** It doesn't embrace or endorse or advocate or prepare the foundation for a broad-based system of family law clinics across the province, although it's capable of doing that within the structure. It states very clearly that the private bar — again, I have no quarrel with the concept, but the private bar can't do it unless there's adequate funding for those services. The private bar, notwithstanding the best of commitments to their profession, when they have a very limited number of hours of preparation in family litigation — and I'm speaking specifically about family law — are going to have to turn down and refuse legal aid certificates.

That's what you've been hearing in this committee, Chair, isn't it? You very specifically have been told that lawyers and law firms simply cannot afford to entertain legal aid certificates when they have overhead; they've got to pay for any number of costs. The certificate program simply is inadequate.

**1050**

I would admonish the government members to be very careful in their enthusiasm for this bill, because obviously it will be up to the next government, the one that will be elected in 1999, to determine the level of funding for legal aid. I'm prepared to concede it could well — look, Lord knows I pray about this more often than anything else that I've ever prayed for, that it not be the Tories who form the next government. I do. No disrespect to you, Chair, but I pray for that and I'll work as hard as I can to prevent it, to make sure the Tories are turfed. But the reality is that when you look at the poll support that the Conservatives have now, depending on how they can stickhandle things and how many more millions of dollars they spend of taxpayers' money on glossy advertising, it's quite conceivable that, yes, they could form a government again.

I want people to be very clear about that, not become complacent about the Tories being defeated just because they're mean and right wing and reactionary, just because they beat up on women and kids and workers and sick people and seniors and students. Don't think that alone is going to get them defeated; it's going to take a whole lot of political work over the course of the next six months to defeat the Tories. I can see that they may well be re-

elected, but even if they're not, the next government, be it Tory or Liberal or NDP, is going to determine the effectiveness of the legal aid system.

Do you want to know something? Let's recall any number of circumstances. Let's recall the promise to revoke the GST and how easy it was to promise that, yet how alluring it was to breach that promise once one forms the government. What I'm saying is that the next government, regardless of its political stripe, is going to be very tempted to save money, to reallocate resources away from the justice system if the legislation allows it to. I'm saying this legislation does.

I'm referring to subsections 65(5) and (6) of the legislation which very specifically provide for stable funding — people know what it is; we talked about it yesterday — for the clinic program for three years and stable funding for refugee and immigration law for a mere two years. Fair enough. There's no legislative provision for stable funding of the overall legal aid plan.

This, Ms Austin, is where you quickly raise the point that the Ministry of the Attorney General — that's Mr Harnick when it comes down to it — promises that the government will maintain stable funding of the overall plan for three years. If he's prepared to promise it, why isn't he prepared to put it in the legislation? He's prepared to put into legislation stable funding for the clinic system for a mere three years and stable funding for refugee law for a mere two years. There's no mention of refugee law. That's been raised. It was raised yesterday; it will be raised again over the course of this week. Clearly this government is abandoning legal aid services for people seeking refugee status.

Is that a politically popular position? I say that it is. This government has read the writing on the wall, senses — yes, sadly and regrettably — an anathema, a building, growing fear perhaps, among other things, about refugee claimants in this country, notwithstanding Canada's commitments to any number of international accords and its responsibilities internationally. This government is exploiting the distaste out there about refugee claimants which quite frankly, in my view, oftentimes has racist overtones or underlying racist qualities. Indeed, "qualities" isn't the appropriate word.

Why should we believe the Attorney General when he promises stable funding? We couldn't believe the Attorney General when he told us the family support plan was up and running up in North York, could we? Far be it from me to say that he lied. I can't say that in committee but I said it outside the committee in front of the press yesterday. I can't say it in committee, I know that, because it's unparliamentary, but I said it to the Thunder Bay Chronicle yesterday, that the Attorney General lied about the family support plan. Why should I believe him, why should any of the public believe him, when he merely promises to provide stable funding over the course of three years?

This is the Attorney General who — I don't know if he's back from New York yet or not — was being wined and dined and courted by Newcourt Credit Group down in

New York City this past weekend. He was down at the Four Seasons having his suite paid for. Apparently he and Mrs Harnick were down there. I had my staff check. Do you know what a room at the Four Seasons is worth? I didn't know. It's been a while since I was down at the Chelsea Hotel on 23rd Street, which I tell you is the low-rent district compared to the Four Seasons. The Four Seasons starts at US\$565 a night for a double, up to US\$1,050 a night for a double. I'm just telling you what they told us. We called them this morning to find out what the room rates are. I wanted to know what Newcourt was paying for Mr Harnick's accommodations in New York. I wanted to know how much an Attorney General costs. Other than the price of some Broadway tickets and an air flight, apparently anywhere from \$560 to \$1,050 a night.

I understand why the crime commission would have wanted to keep him away from the Santa Claus parade here in Toronto this weekend, having heard what Jim Brown said about the Santa Claus parade.

This is the Attorney General who allows himself to be wined and dined and courted by Newcourt, a private corporation that has as its goal, has as part of the whole gang that was down there people who were involved in privatization, including those involved in the planned privatization of Highway 407, among others.

I'm not prepared to accept the Attorney General's say-so because his say-so, his promise, isn't worth a tinker's damn; it isn't worth the paper it's written on. Here it is; it's included in the minister's statement to the House upon the announcement of this so-called reform of legal aid.

Is the structure bad? No. I've indicated that already in the House. Clearly the assumption, the inference you can draw, is that the law society really didn't want the responsibility of administering it any more. Fine. The prospect of an arm's-length corporation is inoffensive in itself. Mind you, has this government in its legislation done anything to ensure that the membership of that corporation, the membership of that board, is going to be representative of all of the facets, all of the sectors, in Ontario society? No, not by a long shot. Indeed, the legislation guarantees that it's going to be padded with political hacks, political appointees.

Again, government backbenchers can protest on behalf of their Attorney General or on behalf of the Premier or on behalf of their cabinet that that won't be the case, but I sat through the ABC committee, the agencies, boards and commissions committee, which screens appointments. You saw the dogs that were paraded through there: pure political appointments, people who very much had a personal and philosophical commitment to this government's agenda. This government knows that the whole issue of legal aid out there among the general public doesn't have a particularly high profile and it's not particularly popular.

The legal aid system has been vilified in part by observations regarding some of the defences of what have been some horrific crimes here in Ontario, some just unspeakable, horrific crimes which involved legal representation and extraordinary legal aid costs because of the nature of the trials. The government understands that legal



aid is not held in particularly high regard by the general public. This government knows that if you polled the community right now and asked them whether they think their tax dollars should be spent on — how would they phrase it if they polled it? “Defending criminals”; I’m sure that’s how members of the crime commission might be inclined to phrase it. Far be it from me to put words into their mouth. You know darn well what the public’s going to say: “Of course we don’t want to see tax dollars invested in defending criminals.”

As Mr Montemuro pointed out yesterday, the whole issue, the real story, the real rationale, was all about protecting the tradition of the presumption of innocence. It was also about making sure the criminal justice system works, or, quite frankly, any other facet of the justice system, be it family law, be it civil litigation, administrative law, what have you. Don’t think that judges and crown attorneys aren’t concerned about the prospect of a complete collapse of the legal aid system and the crisis that will create in our courts and the injustices that will inevitably generate.

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I’ve got to tell you, Chair, I’m not inclined to support this legislation — I think you sort of got the drift some time ago — not because the prospect of an arm’s-length corporate body running legal aid is inherently bad. Of course not. The law society is an independent body. Quite frankly, I’ll accept the recommendations of Professor McCamus in that regard. I’ll accept his recommendations. The bottom line, though, is funding and I don’t think this government is sincere about its commitment to funding, because if it was, it would have put it in the bill, it’s as simple as that, and/or it would have provided for a means whereby the corporation, with all of its advisory groups, could appeal to an independent body to determine what is an adequate level of funding. You know that as well as I do.

I don’t trust this government at all. I don’t trust subsequent governments. I trust subsequent governments a little more than I trust this one. I’ve been here 10 years. I’ve seen all three parties now form government. It hasn’t been a pretty picture, let me tell you. At the end of the day, it hasn’t. The fact is that unless it’s etched in stone, unless it’s a part of the legislation, I don’t trust this government or any subsequent government to adequately fund legal aid services, because it doesn’t have political spin for them. There isn’t a great political payoff, but there are some horrific consequences should legal aid not be adequately funded.

I call on government members to speak out about that, to be outspoken, to be courageous, to let their Attorney General know, if he’s not suffering jet lag from that flight back from La Guardia or Newark — I doubt very much if he drove or took the bus. You know that, don’t you? Not when Newcourt’s paying the tab. You don’t take a bus to New York City; you take the plane. And not when you’re staying at the Four Seasons, where prices start at \$565 a night US — you know what that is in Canadian? — up to \$1,050 a night.

The issue is all about funding. The bill fails to address that. We can’t count on the Attorney General to keep his promise.

**The Chair:** Thank you very much, Mr Kormos, for your presentation.

**Mr Kormos:** Thank you, Chair.

## LAW SOCIETY OF UPPER CANADA

**The Chair:** We call upon our first presenters of the day. If the representative or representatives of the Law Society of Upper Canada could come forward and identify yourselves for Hansard, we would appreciate it. Just so you know, there’s a total time allocated of 20 minutes. At the conclusion of any presentation you may have, the time is divided equally between the three caucuses for questions and answers. Thank you for coming. You may begin.

**Mr Derry Millar:** Thank you. My name is Derry Millar. I’m an elected benchler of the Law Society of Upper Canada and the chair of the clinic funding committee. With me today is Robert Armstrong, QC, who is also an elected benchler and the chair of the legal aid committee of the law society. As you know, Mr Harvey Strosberg, QC, the treasurer of the law society, will be appearing before you on Thursday and he will speak to the bill on behalf of the law society and will discuss with you those portions of the bill that the law society, through convocation, has some difficulty with.

As you all know, the lawyers of Ontario, through the Law Society of Upper Canada, have for over 30 years run the legal aid plan, which is acknowledged as the finest legal aid plan in Canada. As you are also aware, the clinic funding committee, of which I am chair, is presently established by the clinic funding regulation which is part IV of the Legal Aid Act regulations. The clinic funding committee supervises the clinic funding staff and the expenditure of the funding it provides for the operation of the community clinics.

There are 70 community legal clinics in Ontario plus two project clinics operated in conjunction with specific ministries. Of the 70 clinics, 56 are general clinics and 14 are specialty clinics which offer services in particular areas of law or services to the legal needs of a specific client group.

The clinic system is funded by a grant of \$32 million per year from the Ministry of the Attorney General. The funding for the clinic system has been frozen since 1993.

It has been recognized by the Ministry of the Attorney General, and was recognized by the McCamus report, that the clinic system in Ontario provides high-quality and cost-effective representation to the poorest people in the province and provides them with needed poverty law services.

If I might just stop for a moment and speak about the McCamus report, Mr McCamus, in his report:

(1) recognized the valuable contribution of the clinic system to the delivery of poverty law services in Ontario;

(2) recommended that the community legal clinic model be retained as the primary means of delivering poverty law services in the province;

(3) recommended that the community legal system be expanded across the province, in effect to complete the system;

(4) recommended that the community legal clinic system maintain its separate identity within the new legal aid organization;

(5) recommended that the community clinic system be funded for three years after the expiry of the memorandum of understanding at its current level of funding.

The report, among other things, also said that there needs to be more board accountability, including more training for the boards of individual clinics, and he also said there needs to be more coordination between the certificate side and the clinic side at the local level.

The act that you have before you incorporates the recommendations of the McCamus report. You will hear next from the association of legal clinics of Ontario with respect to the new legislation and their perspective.

The clinic funding committee believes that the Legal Aid Services Act, 1998, maintains the independence and community-based nature of legal clinics both by its statutory provisions and in the three-year guarantee of funding for the clinic system. The bill provides the flexibility necessary to provide legal aid services by the most effective means possible, while respecting and preserving the primacy of the private bar as the foundation of family law and criminal law services, and clinics as the foundation of clinic law services.

Mr Armstrong and I would be happy to answer any questions you may have with respect to our respective areas of responsibility.

**The Chair:** Thank you very much for your presentation. That allows us approximately three and a half minutes per caucus, and we'll begin with the third party.

**Mr Kormos:** The law society grappled with the issue of funding the plan over the course of the last couple of years, as I recall it. I recall similarly people travelling out there across the province looking to the public, including members of the bar, for suggestions as to funding. What happened to that exercise?

**Mr Millar:** As you know, Mr Kormos, since I guess 1993, the law society entered into a memorandum of understanding with the then government of Ontario with respect to funding. As a result of that, the funding for the clinics was frozen at \$32 million and the funding with respect to the rest of the legal aid plan was fixed as a result of the memorandum of understanding.

**Mr Robert Armstrong:** At \$167 million, and limited our certificates to 100,000. In the year before the memorandum of understanding, the number of certificates was in the area of 240,000.

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**Mr Kormos:** What led up to the law society relinquishing its stewardship of legal aid?

**Mr Armstrong:** I would be prepared to answer that question. I think it was a combination of the McCamus

report and its recommendation, the Criminal Lawyers' Association making a very strong recommendation that the law society should get out of the legal aid business and, thirdly, the capped funding.

I think the benchers on the whole felt that with the reduced funding available, we did not have any more — not that we ever did, but we had no control over the funding available. It's a very sophisticated social welfare program. We didn't get elected to run a \$250-million social welfare program, and we just thought that we should get out of it and leave it to an independent agency to run.

**Mr Kormos:** You know that the bill provides for stable funding for refugee law for two years, subsections 65(5) and (6), and stable funding for legal aid clinics for three years, but omits any legislated requirement for stable funding of the overall legal aid plan. Why, in your view, would that third element be omitted when in fact the Attorney General promises it? Both of you are lawyers, I think. Why wouldn't the Attorney General want to legislate it if he was prepared to really promise it?

**Mr Armstrong:** That's got to be a question for the Attorney General. We can't answer for him. We're on the way out.

**Mr Kormos:** I don't trust the Attorney General. I won't ask you whether you do or not. His track record is such that it's hard for me to take his word.

**Mr Armstrong:** To be fair, with us so far he has kept his word.

**Mr Millar:** With respect to the clinic system, he has done what he said he was going to do.

**Mr Kormos:** You haven't been involved with the family support plan a whole lot, have you? Thank you.

**The Chair:** We now move to the government members.

**Mr Martiniuk:** As you know, the Attorney General has said that a memorandum of agreement will be signed with the new corporation for stable funding over the next three years. Just for our background, because I was not involved in legal aid, prior to 1993 — this is when the law society, I understand, and the government at the time, Mr Kormos's party, entered into an agreement in which stable funding was guaranteed for five years — can you tell me what occurred prior to 1993 that might have made that necessary?

**Mr Armstrong:** I think it's probably 1994. Prior to 1994, in practice what happened was that the legal aid plan provided a budget approved by the law society. It then came here and typically what would happen is the Attorney General's department would say, "You've asked for too much," and they would approve something like two thirds to 80% of the budget. The law society would go ahead, administer the program and come back and say, "We told you we couldn't do it for two thirds or 80%; we need more money," and the government usually came through with more money.

What happened in 1994 is the government of the day said: "Look, we mean what we said. You can't have any more money, either now or later, and you've got to



administer this program under a capped arrangement of \$167 million from the provincial government." When you add in the other money that came from the federal government and other sources, it came out to about \$240 million to \$250 million. That's the background of it, so it was in a sense a kind of open-ended funding arrangement that had existed for nearly 30 years. We think it worked well, we think we administered it responsibly, but the political masters and mistresses of the day said, "We don't agree with that any more." We said, to be blunt about it, "Okay, you should get somebody else to run it."

**Mr Martiniuk:** I take it the government of the day was saying, "Because of our obligations to the taxpayer, we can't write a blank cheque."

**Mr Armstrong:** I think that's fair, yes.

**Mr Millar:** With respect to the clinics, the clinics would provide a budget and the budget would be approved by the ministry, and what happened in 1994 is that the budget was then frozen at the 1993 level.

**The Chair:** We now move to the official opposition.

**Ms Castrilli:** Thank you, Derry and Bob, for being here today and giving us a very unique view of this legislation.

I want to make a comment and then ask two questions of you. I hope I have time for that. The comment is that certainly in the Legislature we have had a lot of finger pointing, particularly on the government side, on mismanagement of the legal aid plan by the law society. I have been on record, and want to go on record again in this committee, to say that there were certainly some problems but finger pointing is not the solution. The issue has always been one of funding and not mismanagement.

The questions that I have for you are these. The first is, you have mentioned that \$32 million is the amount that has been allocated for the last few years to clinic funding, and I'd like you to comment on whether that's going to be adequate for the foreseeable future. It's going to be frozen, as you know.

The second question — I want to get it in so that the Chair won't say I'm out of time — is we heard yesterday in Thunder Bay where we had a number of groups appear, including some that came from further north, that there were some real problems with respect to getting legal assistance. One of the recommendations that Professor McCamus made with respect to the clinic system — it refers specifically to number 11; I don't know if you have it in front of you — is that there should be a completion of the geographic coverage of the general service that clinics provide. I wonder if you feel this legislation addresses that at all, given the disparity of service available in northern and southern Ontario.

**Mr Millar:** With respect to the clinics, I think it has been recognized by everyone who has ever been involved with the clinics that they have been very cost-effective and that they have been very responsible organizations. The clinics have never run a deficit, because the clinics get a budget and the clinics live within the budget.

What the bill does in subsection 65(4) is set a floor, as we see it, with respect to the funding of the clinics. The

clinic system hopes that when the new corporation is set up the allocation of monies for the clinic system will increase and that the clinic system will have more resources to do its job. Really, the legislation is in effect doing what McCamus said, saying, "You will have no less than what you've got now, and it's hoped that the clinic system will get more."

In order to complete the clinic system throughout the province, more funding is necessary, because the clinic system cannot expand without more funding. The staff in the clinics, for example, haven't had a raise in five years, so we need more money, and this section provides a base.

**Ms Castrilli:** But there's no guarantee that the additional funding will be available. As you stated, there's a floor but there's no guarantee beyond that.

**Mr Millar:** We would love to have a guarantee, but that's not something that —

**Ms Castrilli:** It's not there. Thank you very much.

**The Chair:** Thank you very much for coming forward today. We very much appreciated your presentation.

#### ASSOCIATION OF COMMUNITY LEGAL CLINICS OF ONTARIO

**The Chair:** We'll call our next presenters. If the representatives of the Association of Community Legal Clinics of Ontario could come forward.

**Mr Kormos:** On a point of order, Chair: The last presentation did nothing to quash the rumours that the trade-off between the AG and the law society was that if the AG gave them the Law Society Act, they'd give the AG Bill 68. What can I say?

**The Chair:** For the presenters who have come forward, if you could identify yourselves for Hansard, we would very much appreciate that. You may begin.

**Ms Ernestine van Marle:** Thank you for giving us the opportunity to respond to the proposed bill. I'm Ernestine van Marle; I'm the co-chair of the Association of Community Legal Clinics of Ontario. I'm also the chair of the board of a legal clinic. As you know, board members serve without pay. The reason they are there is that they believe in the tremendous value of the services. The other advantage is that board members are often involved in many other things, and so they have an intimate knowledge of mental health or immigrants or whatever they are involved in. Often the legal clinics, at least in my area, have a splendid working relationship with your constituency workers. We are a source of referrals and a resource to the people who work with you.

Hugh Tye, who is sitting on my left, is the other co-chair of the association. He is a lawyer and a director of his clinic, and he will make the presentation.

Ivana Petricone is also a lawyer and a clinic director, and she is a member of the legal aid subcommittee of the association. Ivana will respond to whatever questions you may have.

I understand that a few clinics will also make presentations but that they will speak to specific issues in their communities.

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**Mr Hugh Tye:** Mr Chair and members of the committee, the association, after analyzing the draft legislation, has certainly concluded that there's much to commend in the Legal Aid Services Act, 1998, in its current state, primarily because we believe it's based on the blueprint established by Professor McCamus in the 1997 report. We certainly endorse the stated purpose of the act, contained in section 1, that being "to promote access to justice throughout Ontario for low-income individuals." We believe that the legal aid system created by this legislation has the potential to accomplish that stated goal.

We applaud the creation of an independent corporation to operate the legal system. Clearly there is the potential for that board to be accountable to the users of legal aid services, that being in the criteria set out for the appointment of individuals to that board.

We're pleased that some members must have knowledge and experience in the difficulties confronting low-income individuals in this province. We support the legislation's inclusive approach to legal services, which allows for innovation under the new scheme. Certainly the board will be given some flexibility in how it chooses to meet the legal needs that are identified in the province. We also support the stability that is provided by a five-year memorandum of understanding in section 70 of the legislation and the three-year funding cycle for the clinic system.

Referring specifically to the legislation's provisions dealing with community legal clinics, we certainly support the recognition of clinic law as a fundamental component of the legal aid system and the very broad, inclusive definition of "clinic law." Also, the definition of clinics themselves preserves the independent, community-based nature of clinics, which we believe is the underpinning of our system. We also endorse the fact that there is a standing committee for clinics and that there is a three-year minimum funding guarantee for the system, which is consistent with what Professor McCamus recommended.

Some housekeeping amendments that we would like to note are contained in section 4 of our written presentation. These are to sections 33 through 39 of the bill, which deal primarily with clinics. We have noted some inconsistencies with other sections and have therefore suggested that when funding decisions are made about clinics, there be written reasons provided and a reconsideration process. Some sections deal with it, some don't. We recommend some consistency there.

Also, there appears to be an omission of the fundamental duty of local clinics to determine the legal needs of the community and the services that should be provided therein. It's implicit — clearly this is the fundamental nature of clinics and boards — but we feel it should be an explicit duty set out in the legislation.

Finally, we have asked for some clarity and precision in section 38.

We have also identified some provisions in the act that we feel are not consistent with the stated purpose of the legislation. Those are contained in our written presen-

tation. I will just touch on them briefly, and then I will pass the microphone to Ivana.

Clearly it's essential that the new board, Legal Aid Ontario, be independent of government funders as well as the legal profession responsible for providing most of the services under this new system. With reference to that board, the act contains criteria for the selection of directors, as I mentioned, but it does not deal with the process of appointment. We feel this is critical, and we recommend an independent selection process or at very least one that is guaranteed to be open and consultative beyond simply consulting with the treasurer of the law society of the province. We feel that this would go a long way to ensuring the independence that is so important to this new legislation.

In the immediate future, for the transitional board which is contemplated in section 9, there are no criteria at all for selection and there are unlimited powers and unlimited tenure. Again, we feel it's critical that there be limits on tenure and powers for the transitional board and an open selection process for the appointment of the five individuals to that important board.

**Ms Ivana Petricone:** You've heard several times today from my colleagues and from others who have spoken how important it is for Legal Aid Ontario to be independent of the government that funds it. I'd like to underline that it's of particular importance to clients of community legal clinics, who more often than not are involved in disputes with that government.

For that reason, we find that subsection 13(3) concerns us somewhat. We think this subsection has the potential to erode the independence that you have heard is so vital for Legal Aid Ontario. Subsection 13(3) lists several areas of law which Legal Aid Ontario would be prohibited from providing. Clause 13(3)(e) gives the government the authority to set regulations in any area of civil law. Our concern is that this erodes the jurisdiction of Legal Aid Ontario to determine the needs of low-income Ontarians and the disadvantaged community, and it therefore should be removed from that section. Our concern is that political considerations might be involved in deciding which areas of civil law might be prohibited.

You've also heard of the importance of funding. I'd like to underline that we also are concerned with Legal Aid Ontario having adequate multi-year stable funding. But our concern also involves the independence issue, somewhat like the issue we all had with our parents, that we couldn't be truly independent until we were economically independent. It's vital that we have independence with respect to funding from the government.

You've also heard that this act circumscribes immigration and refugee law services. That concerns us a great deal. Professor McCamus recommended that the design of the legal aid system should address the diversity of special needs presented by ethnic, racial, cultural and linguistic minorities. The report offered several ways to enhance these services to the refugee and immigrant communities.

However, immigration and refugee law is not specifically named in the list of services under subsection 13(1).



You've also heard that funding is only guaranteed for two years. While it's our understanding that these two years are to permit the province to negotiate with the federal government to live up to its obligations, and while we would all like to see the federal government meet those obligations, it's our concern that many refugees will suffer in the meantime. And "suffer" is the correct word for this, because these are people who are at risk of losing their lives, at risk of being returned to countries where their rights have been seriously violated. I can't underline how vulnerable this community is and how much they need legal aid services. So I urge you to include refugee and immigration law in the list of services and to remove the two-year limitation on the funding guarantee.

1130

Several sections in the act deal with the quality assurance program. We initiated a quality assurance program in the clinic system almost two years ago. We're developing experience in this area. Clinics are supportive of a program which helps to ensure that our services are top-notch. We're particularly supportive not only because it improves the work we do, but also because it guarantees the highest level of services for the low-income community we serve.

We believe, however, that two fundamental principles must guide any quality assurance program. These are that the client's right to confidentiality must be of utmost importance, and that the goal of the program must be to support and improve the work we do and not part of a disciplinary process.

To this end, we recommend some amendments to sections 89 and 91, which are in our written brief. Briefly, these state explicitly the purpose of the quality assurance program, which we suggest is to provide ongoing, verifiable assessment of the quality of operations. The second amendment requires the authorization of each client for a file to be reviewed by an employee of the quality assurance program. Third, we suggest that the word "review," as in "quality assurance review," be substituted for the word "audit," to better reflect the intent of the program. Generally, we've recommended some amendments which will build greater protection for confidentiality of clients once that information is in the hands of the quality assurance employees.

We're happy to answer any questions you have.

**The Chair:** We have a little over two minutes per caucus, and we'll begin with the government members.

**Mr Martiniuk:** Thank you for assisting us here today, and thank you for your volunteer time.

As a matter of education, could you give me a typical legal aid clinic and the services and percentages they might — I know there's no such thing as typical, they all vary. But I'm interested in the services they would provide and the percentages of those services.

**Ms Petricone:** There are two types of clinics, as you heard Mr Millar describe. Hugh and I work in general services clinics, and there are several specialty clinics.

The general services clinics are in geographic localities, and so our communities are defined by the geography,

the location we're in. Generally we provide services in housing, landlord and tenant law, social assistance law, workers' compensation. We do Canada pension disability plan appeals, employment insurance appeals: those areas of the law that the poor generally have the most need of. Several clinics in Toronto give services in immigration and refugee law.

In terms of percentages, it's difficult to say. In my clinic right now, housing is the highest, followed by social assistance. I'm sure you're aware of the circumstances there have been in the past few years to make that necessary.

The specialty clinics define their communities by a particular disadvantage that a community might face. So there are specialty clinics that serve the elderly, the disabled, and children and youth. There are two that serve injured workers. There is a clinic that specializes in public legal education. There is a correctional law program specialty clinic that assists inmates. That's generally; I don't know if I've answered your question.

**The Chair:** We now move to the official opposition.

**Ms Castrilli:** Thank you very much for being here and giving us a perspective from the people on the ground who do the work, and thank you for doing it without a pay raise for five years, which is what we heard the law society say just before you.

Yesterday in Thunder Bay the Roman Catholic Diocese of Thunder Bay, which does a significant amount of work and has pioneered work with refugees in northern Ontario, indicated to us that it's not entirely correct to say that the responsibility for immigration rests solely with the federal government. They advanced two arguments. One is that the funding for refugee and immigrant matters is covered under the federal general transfer payments, and so the province can allocate that in any way it wants and it's bogus to say that it should not be allocated in that area. The second is that there are no qualms in provincial matters, for instance, for legal aid to cover criminal law, which is federal, and yet they balk at refugee and immigration law as being federal. I wonder if you agree with that and what comments you might have.

**Ms Petricone:** Let me say that when we were receiving our briefings with respect to this act and when we raised our concerns about subsection 65(6), it was explained to us that the reason for the two-year period was to give the province an opportunity to negotiate with the federal government. Our association can't comment on whether that's appropriate. Our concern is that if it is appropriate and the province feels it must enter these negotiations, there needs to be a safety net for the people who need the services in the meantime. They shouldn't be pawns in this debate.

**Ms Castrilli:** Could I just say your recommendations are very practical, and thank you very much.

**The Chair:** We now move to the third party.

**Mr Kormos:** Who briefed you on the legislation?

**Ms Petricone:** The legal aid reform project.

**Mr Kormos:** Ms Austin?

**Ms Petricone:** Yes, and her staff.

**Mr Kormos:** Did you believe everything she told you about the rationale, for instance, for the two-year commitment to refugee law funding but no mention of it in terms of the scope of legal aid in the earlier parts of the bill? Did you believe her?

**Ms Petricone:** We had no reason to disbelieve her.

**Mr Kormos:** Then why would refugee law be included in the scope of practices to be encompassed by legal aid within either the clinic or certificate areas?

**Ms Petricone:** The explanation that was given to us was what I have already stated.

**Mr Kormos:** I know what she told you because she told me the same thing in my briefing, and I quite frankly think that's political spin. It would have been so easy to include refugee law as one of the mandates of clinics or certificate areas at the same time as saying stable funding will only be there for two years, just as they include clinic law very clearly and you applaud that, but they say it will maintain stable funding for only three years for clinic law. I think this government doesn't give a tinker's damn about refugee law. Otherwise it would have been put into the earlier parts of the bill.

**Ms Petricone:** We're asking them to do that.

**Mr Kormos:** You bet your boots. But you understand that politically the polling, the public opinion, is on their side. The public, by and large, is unsympathetic to refugee issues. You hear the radio talk shows and that sort of stuff, don't you?

**Ms Petricone:** Yes. We also see the refugees and the immigrants who not only come to us for refugee and immigration law services but for all the other services I've mentioned.

**Mr Kormos:** I admire your trust in these people, honestly. I wish I could come up with even a fraction of it.

FAMILY BAR OF NORTHUMBERLAND  
COUNTY/NORTHUMBERLAND  
COMMUNITY LEGAL CENTRE

**The Chair:** Our last presenters of the morning are the Family Bar of Northumberland County/Northumberland Community Legal Centre. If you could identify yourself for Hansard, we would appreciate it.

**Mr Wilfred Day:** My name is Wilfred Day. I have been practising law in Port Hope for 27 years, primarily litigation.

This is a report from the front lines. I have two hats today. The first is for Northumberland county's family bar: 28 lawyers in Cobourg, Port Hope, Brighton and Campbellford.

The government is right to be proud of parts of Bill 68. First, having an independent board dominated by non-lawyers will finally let legal aid deal with business such as lawyers' fees without being faulted for conflict of interest. Second, many key points were not in the old act but only in the regulations. When people grumble about the many powers given to cabinet under the omnibus bill, you can say some acts, like this one, go the other way. For

example, this bill does spell out the principles that Legal Aid Ontario "shall provide...services in...family law," and that the private bar is "the foundation for" the provision of family law services.

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Still, on most points the new board of Legal Aid Ontario will decide. How responsive to local needs will the new system be? Area committees and area directors will have the functions assigned by the board. Why are we watching this new board? Some background will show you.

Although this act speaks to the future, you may feel nostalgic when you see how family law legal aid works in Northumberland. Next door in Durham region, a local survey last fall showed that out of 145 family lawyers, only 24 still take legal aid. By contrast, in our county it still works the way it was meant to, by the whole bar sharing the load. We have 28 lawyers with a substantial family law practice. All but two still take legal aid. Almost all of us are small business owners; that is, sole practitioners or partners in small firms. The 26 family lawyers who still take legal aid, five women and 21 men, have an average experience of 15 years in practice.

We worry about access to legal aid. We see every day that judges cannot administer justice properly when unrepresented litigants bring cases before judges with bad documents. In 1993-94, our county issued 799 civil certificates, mostly family. However, after the 1994 cutbacks, the number crashed to 116 in 1996-97, only 15% of the past level.

We cut a bit more than our share in our county. However, our big problem was the provincial cut in family law. In those three years, criminal certificates in Ontario dropped to 50% of pre-cutback levels and immigration dropped to 35%, but family law dropped to 21% of pre-cutback levels. Legal aid overshot its target cuts in family law, but even last year the provincial limit in family law was still only 29% of the pre-cutback level.

Let's be clear who we are talking about. The Supreme Court of Canada, in Moge, told courts to take judicial notice of what they called the "feminization of poverty." This applies not just to young single parents but to seniors without private pensions, usually women, and those earning minimum wage, usually women. Take a woman working for \$9.60 an hour and living alone with her one child. Their basic needs for shelter, food and other necessities are \$1,596 a month, according to legal aid's tables, not counting debt payments or child care costs. That's exactly what she takes home. If she's not getting child support, she qualifies for free legal aid. If the child's father also earns \$9.60 an hour, he pays child support of \$163 per month, plus his share of child care costs. If her debt payments eat that up, as usually happens, she still qualifies for free legal aid. I have a client who maxed out her credit card charging diapers and formula when her maternity benefits from unemployment insurance would not stretch far enough. About half my clients are women and half are men, but whichever side one is on, the issue will not go away.



Because we share the load in places like Northumberland, legal aid has gotten away with freezing our pay for 11 years. The basic legal aid rate has been \$67 per hour since 1987. As its last kick at the can before handing over legal aid, the law society finally got up its nerve to say an increase was overdue. Legal aid had the money, because the cuts overshot the targets, yet the cabinet recently refused to approve an increase in the hourly rate, after 11 years, of 4%. If we see a 1987 child support order, with inflation of 33% since 1987, as part of our work we get the child support raised. Yet we can't get our own fees to keep pace with inflation. Our mistake obviously was asking for only 4%.

As you know, women get 95% of family law certificates. In Northumberland these women still have almost the same choice of lawyers as men do. In many districts like Durham this is no longer true. It will not stay true in our county forever either.

Recently one of us dropped off the panel, noting that \$67 per hour barely covers his overhead. He says he does his volunteer work after hours, but he would come back if the rate went up to \$90 an hour. Once the senior lawyers quit taking their share, the middle group cannot afford to pick up the slack and the system collapses to the point where a woman on legal aid has to choose among a few less experienced lawyers who take most of the certificates. This means that the first item on the new board's agenda will be the inadequate rates, which in many places deny women equal access to justice. The second will be the barriers to equal access to justice caused by the cuts in certificates.

Hence, my main point: The credibility of this new board is vital to the confidence of the bar in the new legal aid plan. Without that confidence, it won't work. We frankly had doubts about some of the old legal aid committee. They were mostly law society benchers, most of whom no longer took legal aid certificates, if they ever did. They meant well, but the Bay Street types did not look as if they were in touch with the front lines.

Several provisions in your bill are vital. The Attorney General names five directors. Section 5(5) says he or she shall ensure that they "reflect the geographic diversity of the province." Likely, you would all assume that means one from western Ontario, one from the east, one from the north and two from Toronto. However, no doubt you know many Toronto lawyers who could sincerely think this means one out-of-town member to give balance to the four from Toronto.

Legal Aid Ontario shall divide the province into designated areas and may merge them. This makes counties and districts like ours very nervous that someone in Toronto will decide we no longer need our own part-time area director. Therefore, the submission of the County and District Law Presidents' Association to the legal aid project team asked that the bill spell out the geographic distribution very clearly. Section 5(7) says that of the five members from the law society, no more than three can be benchers. It would help to spell out their geographic distribution as well.

The CDLPA submission also said that the lawyers on the board should all be lawyers who "engage in actual delivery of legal aid services." Perhaps you may leave that choice to the law society, but it would help if you said that at least three lawyers from the law society must be lawyers who currently provide some legal aid services.

Despite the bill's many good points, it has one big flaw of general public interest: The independent board does not look independent. This draft has the Attorney General selecting all 11 directors. The Attorney General's October 6 news release calls Legal Aid Ontario an "independent organization." The ministry's background document accompanying it states, "Legal Aid Ontario's independence from government and the legal profession...is necessary to ensure that the organization represents the public and is not in a conflict-of-interest position with the government, which is a party in a majority of legal aid cases, or the legal profession." Clearly the ministry is inviting an amendment to ensure this. The board is already accountable to the government that sets its budget. The Attorney General does not need to select the whole board as well.

The Attorney General is clear that the board not be in the hands of lawyers. We agree. So we need some directors independent of both the bar and the government. The CDLPA proposed a board of 15: seven lawyers, four government appointees and four independent of both government and lawyers.

We request two amendments to the bill to ensure that the board is truly independent:

(1) This draft says that the Attorney General selects five lawyers "from a list of persons recommended by the law society." But to ensure the board's independence, the law society must actually name the lawyers. If you want to put parameters on the law society's choices, for the sake of transparency you should put them in the bill, not in the hands of the Attorney General.

(2) The Attorney General must not select the majority of members, but the majority must be non-lawyers. Therefore, we suggest two independent non-lawyer members. One could be named by the deans of Ontario law schools and one by the Association of Community Legal Clinics of Ontario in consultation with user groups like the association of women's shelters, persons with disabilities, the Elizabeth Fry Society, the John Howard Society and the mental health association.

Putting on my second hat as chair of the board of the Northumberland Community Legal Centre, I support the submissions that you've just heard from the ACLCO. I am here mainly to make my submissions for the family bar, so I will not go into more detail on the clinics. I would point out one excellent point in your bill which used to be only in the regulations, which is that each clinic shall be an independent community organization.

Our board passed two motions at its last meeting. One was, "That we request an amendment to the act to ensure that the board is truly independent...." This is the same as I've said for the family lawyers. The law society must name the lawyers, with two additional non-lawyer members to be added.

Secondly, as Chief Justice McMurtry told our conference in April, "What distinguishes the clinics...is their ability to respond in a community-specific way" to the needs of those in poverty. Under your bill, Legal Aid Ontario shall "determine the legal needs of low-income individuals and of disadvantaged communities in Ontario" and "establish priorities for the areas of law, types of cases and types of proceedings for which it will provide legal aid services."

We believe it's understood that clinic boards will have a duty to do the same in their communities, but the bill is silent on this. Therefore, our board also voted, "That we request a 'housekeeping' amendment to section 39 of the bill to add the duty of a clinic board to determine the legal needs of the community served by the clinic, and establish priorities and policies for the clinic's services and methods of providing them."

Thank you, Mr Chair and members of the committee.

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**The Chair:** Thank you for your presentation. That affords us three minutes per caucus. We'll begin with the official opposition.

**Ms Castrilli:** Thank you very much, Mr Day, for being here. I must say I'm quite impressed by the fact that so many lawyers in your jurisdiction still take legal aid certificates. That's got to be a rarity in Ontario.

I'm interested in the comments you made with respect to the independence of this new body, Legal Aid Ontario. We heard from others yesterday that they believe it's not only an issue of independence, that the way it's currently structured this body will not be independent from the Attorney General and the Ministry of the Attorney General, but that indeed it might even be more difficult to deal with this board if the appointments are ideological appointments. That is, the board might in fact include individuals who don't believe in legal aid for all sorts of reasons that we've talked about this morning: The public perception may be that legal aid is only for others, not for themselves, for generally criminals and people on welfare, and, "Who wants to spend any money on them?"

I wonder if you might comment on that. You've made a number of recommendations, but what would be your preference with respect to the appointments to this board?

**Mr Day:** We certainly recognize that the Attorney General and the government should have a major role in the appointment of board members. It's important that there be a variety of views on the board; it's important that there be people with management expertise who are not lawyers who can bring a different perspective. Our concern is that this board has to negotiate with the ministry to persuade the ministry of what budget it needs, to negotiate a three-year financial plan, a five-year memorandum of understanding. There's a variety of things that this board has to negotiate with the ministry. That's a pretty clear conflict of interest if the majority of the members — in fact, all 11 of them — have been selected by the Attorney General.

Even if the Attorney General is given a list of five by the law society and approves them all, or if you amend the

act to say that the law society can name the five, still the Attorney General selects the other six. When you have a board, a majority of whom have been appointed by the Attorney General, then having to sit down and negotiate with the government and say, "Look, the money you've given us is not adequate," it simply doesn't give the appearance of independence. It gives the appearance of a conflict of interest and it doesn't inspire lawyers in the front lines like our group to feel that this board is really going to stick up for them.

**Ms Castrilli:** Would you approve of the kind of precedents that we already have with the Provincial Auditor's office or with the Ombudsman's office, where the report is directly to the Legislature and not to the Attorney General himself?

**Mr Day:** There are some provisions in this bill for the board to have some direct relationship with the Legislature, which is good. I'm just looking specifically at the appointment process.

**Ms Castrilli:** But if the chair were to be someone who had to be confirmed by the Legislature and if the appointment process could be devised so that the appointments were more impartial, that would address a lot of your concerns?

**Mr Day:** The chair is already the subject of a fairly elaborate consultation mechanism, and if you added another bell or whistle to it by having them approved by some all-party committee, that might add further. My simple point is that there needs to be a couple of people on there, at least two, maybe more, who are not appointed by either the government or the legal profession.

**Ms Castrilli:** Thank you very much.

**The Chair:** We move to the third party.

**Mr Kormos:** Just because you're here and you commented on some of the historical phenomena within the legal aid plan, when you've got a higher demand than you have resources, I suppose you can raise the eligibility standard so that fewer people are entitled to certificates or entitled to legal clinic services; you can reduce the amount of block fees or hourly fees payable to lawyers who accept certificates; or you can delist services, as has been done, for instance, both in criminal and family litigation.

Where would you propose that the hit take place?

**Mr Day:** There's a variety of ways to do that, and the important thing really is that whoever is making that decision should have contact with lawyers who have to live with the result. There's not only restrictions on eligibility and delisting services; there's also restricting the hours on certain services.

For example, right now custody cases are given more hours than support but they are given the same hourly rate. One of the questions that one might have is whether support cases necessarily need to be given the same priority as custody cases. For example, in Durham, I'm aware of the fact that the few remaining senior lawyers who do take some certificates primarily do so in the area of child welfare law, children's aid society cases, because that's an area that they feel is a priority and they're prepared to take those cases at a reduced rate, but they won't take



legal aid for spousal support. So there's a variety of ways of breaking that down. We're nervous that this decision will be made by management experts who don't really know what's happening in the courts.

**Mr Kormos:** On the issue of independence of this corporation, the previous submitters talked about an independent means of resourcing, and that is to say that the budgeting be independent of the political considerations by the government. That's obviously a legitimate observation, because I don't trust this government to maintain funding for legal aid. I don't think it's a high priority for this government. My fear is that subsequent governments may enjoy the same abandonment of legal aid as they reallocate resources into things like tax breaks for the rich people and so on.

Would you advocate that the bill contain some means whereby adequate funding is determined, independent of the cabinet?

**Mr Day:** That's basically why we want the board to be independent. Any government, as you know very well, can cut funding for legal aid. What we need is a board that will be prepared to say, "The repercussions of doing so will be thus and so," and make those submissions publicly and stand up for the users of the service.

**The Chair:** Thank you very much, Mr Kormos. We'll move to the government members.

**Mr Bob Wood (London South):** I would like to ask you a couple of questions about case management and the potentials therefor in the new corporation. Before I do that, I should declare my view that I think family law has tended to be pushed aside a bit because there are certain things that have to be done in order to sustain criminal convictions, so if push comes to shove, family law has tended to maybe get pushed off the stage.

**Mr Day:** No question.

**Mr Bob Wood:** I think as well, sometimes some of the not very glamorous parts of family law — an undefended divorce can actually be quite important to somebody, and I think that's tended to get pushed off the stage in recent years —

**Mr Day:** That's been pushed completely off. That's now a luxury.

**Mr Bob Wood:** — unlike what happened 25 years ago, when that was recognized as something that was important.

My question is this: Do you think that a strong emphasis on case management, with some discretion to the case manager, who presumably would be the new equivalent of the area director of legal aid, would be helpful? In other words, should the lawyer be able to go to the corporation and say, "Here's the case, here's what I think is needed," and the case manager then has some discretion to allocate resources, or to decline to allocate resources if there is really no case worth pursuing? Do you think that would be helpful or not?

**Mr Day:** Actually, that's what we have now and what we're nervous we may lose. The area director at the moment has discretion to allocate additional hours for a custody case or an access case that is turning into a

monster. Right now, the area director can allocate a certain number of hours and then you come back and give an opinion letter: what's happening, why I need more hours. We hope area directors will be allowed some degree of autonomy. We're not sure whether that's going to continue.

**Mr Bob Wood:** Having heard your first answer, they could be given more authority?

**Mr Day:** They absolutely could be, and area committees in particular could be given authority to do some serious local planning. One of the options that's never been considered yet, as far as I can tell, although I really don't know why, is that local clinic boards are allowed discretion to be responsive to the needs of local communities. Area committees have no planning function. They simply hear appeals from refusals by the area director, although area committees are generally quite broadly representative of their community. Nobody has ever really considered, as far as I can tell, a pilot project of allowing an area to have a global budget and set its own local priorities. I think it would be a useful experiment.

**Mr Bob Wood:** What about the flipside of it, where the equivalent of the director could say: "This case has very little merit. We're allocating \$750 and that's it"?

**Mr Day:** That happens now.

**Mr Bob Wood:** You'd support that in the program?

**Mr Day:** Oh, sure. You have to be able to do that; otherwise you can't deal with the cases that really need the service.

**The Chair:** Thank you very much for coming forward. We very much appreciate you taking the time to come today.

This committee sits recessed until 1300 of the clock today.

*The committee recessed from 1200 to 1310.*

## CRIMINAL LAWYERS' ASSOCIATION

**The Chair:** I will call the standing committee on administration of justice, discussing Bill 68, the Legal Aid Services Act, back to order.

At this time this afternoon I call the first presenter forward, the representative of the Criminal Lawyers' Association. If you could identify yourself for Hansard, we would appreciate it. You may begin.

**Ms Katherine McLeod:** Good afternoon, ladies and gentlemen. My name is Katherine McLeod. I'm one of the vice-presidents of the Criminal Lawyers' Association. We want to express our gratitude firstly at being invited to appear before your committee. I've provided you with a summary of our basic submissions, so you can take that with you afterwards.

We have a number of concerns with the bill. The first one I've referred to in my summary is section 7, and that's the role of the advisory committees. You'll see under section 7 that the bill anticipates that advisory committees of essentially the service-providers sit, as it were, in the background and provide their expertise to the board.

When this change in governance was being debated both among ourselves and in our consultations with the ministry, I think we were one of the first proponents of the idea that the stakeholders or the service-providers not be at the table as a voting board member, because we're aware of the squabbles that have gone on between the various bars over the period of time, but that there be advisory committees which report to the board and which are present at the board, not necessarily as voting members. So it doesn't seem the legislation provides for any link between the advisory committees and the board.

The link we have proposed is that they be present at the table to assist and advise, but not as voting members. That's our first, main concern. Essentially, we think that without this link there may be a concern about the lack of expertise on the board. We understand the reason why; obviously it's considered that non-lawyers should make up the majority of the board. That's our first concern.

Our second concern is with respect to section 70. In that, you will see that it's anticipated that the new corporation and the Attorney General should enter a memorandum of understanding to provide for funding for each successive year after the initial period of time. Our concern is that the legislation is absolute: They "shall" enter into an agreement. The problem is, what happens if they can't agree? What we're looking to see in the bill and what we'd respectfully suggest is that some proponent of binding arbitration or some provision for arbitration be contained within that so that it's not an all-or-nothing proposition.

The third part of our submission is what has been referred to obliquely in the legislation but more up front in the press releases issued by the ministry, and that is that the future budget, which is essentially the present budget, for the new corporation should also fund pilot projects in alternative methods of delivery. This is a concern to the Criminal Lawyers' Association on two bases. One is that there will be very valuable funds taken out of the present budget and put into potentially very capital-intensive projects and therefore deprive those who are really in need at the present time for the sake of capital projects.

The second adjunct to that is the type of pilot projects that could be anticipated. When you look at the purpose of the legislation, it recommends and appreciates the certificate method of delivery, which we know now as and refer to as *judicare*, where a client can go to legal aid — and I'm only speaking about criminal matters here — and say: "I fulfill the financial eligibility. Please, can you give me a certificate?" The client will then have that certificate and can trot off to a lawyer of his or her choice and say: "Here's my certificate. Please, will you represent me?" That's the certificate model, but it's also the *judicare* model, where the client has his or her right to counsel of choice.

There are other projects which have been debated. The law society, when it was debating them, expressly disavowed this particular method of delivery. There's something called franchising, which is similarly a certificate method, but what would happen is lawyers would bid for

50 certificates. They'd say, "Right, I want certificates 1 to 50," and they would bid an amount for that. That certificate method is not *judicare*. We caution that we're very concerned about that purpose in the legislation. We'd like to see it defined within the legislation a little more closely in saying not only that the certificate method be the foundation but that the *judicare* method would be the foundation for the delivery of criminal services in the province. That is a concern for us.

I'm going to jump to 5 before I go to 4 of our submission. Number 5 is essentially an appreciation. Very often the criminal and the immigration bar work hand in hand, because a criminal charge will generate immigration consequences. We have continually and continuously been concerned about the lack of support from the federal government for the immigration bar and for its prerogative, we think, to fund. That's a statement contained in our submission of our support of this government to continue its negotiations. We note that the immigration bar has essentially been disenfranchised under the new legal aid bill and we obviously have concerns about that, but we know that the remedy is with the federal government.

My last submission is perhaps what has generated the most concern among our bar, and that is under section 14 of the bill, which is entitled "Methods of providing legal aid services." You can see that it includes, under clause 14(1)(b), "the authorization of service-providers, by means of certificates, to provide legal aid services to individuals or a group of individuals." Under section 2 of the bill, "service-provider" has contained within its definition "paralegal." Paralegals, within the criminal law context, have become a real problem in the criminal bar. There have been numerous court cases whereby the competence of counsel has been challenged because an accused person facing a potential jail sentence of possibly up to 18 months has been represented by a paralegal.

Madame Justice Bonnie Wein, who heard a case called *Lemonides*, recommended that this was an area that the government of the day should look at for the purpose of legislating paralegals out of the criminal courts. We don't take an issue with them in the Highway Traffic Act and the provincial offences courts, but we're talking particularly about the criminal courts, where criminal sanctions are imposed.

There have been numerous recommendations, both by the uniform law conference and other court cases, that this is an area of particular danger within the criminal law field. What we see in the legal aid bill is an express provision that service-providers include paralegals. We're aware that under subsection 14(4) there's a statement that "A paralegal shall not provide legal aid services except under the supervision of a lawyer." But there's a juxtaposition here which we don't understand between 14(1)(a), which means they can get certificates, and subsection (4), saying they can't do it except under the supervision of a lawyer.

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We are looking for support within this bill for the exclusion of paralegals from getting any form of legal aid



certificates within the criminal law field. Some might accuse us, saying, "It may be competition and that's why you're against it." I just want to highlight for the committee some of the problems with paralegals in criminal courts.

They are not regulated. When they speak to a client, there is not the protection of solicitor-client privilege. Should a client have a problem, there is nobody backing them, such as the law society that's sitting on lawyers' backs all the time to ensure that they're not negligent. There's nothing for the paralegals. When a crown attorney speaks to a lawyer, lawyers speak about cases as officers of the court. There is no such protection or such responsibility for a paralegal. There's absolutely no provision for them to have any training in law.

Indeed, in the case in front of Madame Justice Wein which led to her suggestions, one of the clerks of the paralegal whose performance was at issue, an office clerk, got up and very proudly protested that he too was now representing people on summary conviction matters in the courts, such as domestic assaults where people routinely go to jail. When he was asked what kind of training he had, he said he read a book by some guy called Hogg, not the guy in the East Mall but some other guy. He was of course, for those who understand him, referring to, we think, the constitutional expert Professor Peter Hogg, but that was the extent of his training.

One of the busiest paralegals in our criminal courts was only last week, on top of his previous convictions for fraud and for fabricating evidence — he routinely appears in criminal court — convicted of fraud again, whereby he represented to one of the social services that he had AIDS. He received \$55,000 in benefits. He was found guilty. He received a conditional sentence of two years less a day, a conditional sentence meaning he doesn't go to jail; he serves it in the community.

These are the kinds of people who are appearing in courts under the name of "paralegal." We're extremely concerned that the legal aid bill does not exclude paralegals or, as we call them, paid agents, from appearing or from receiving certificates in the criminal law field. Our strongest submission is to urge the committee that of any amendments they make, that is the most significant from the criminal law field for the purpose of the administration of justice and for the clients involved.

Those, respectfully, are our submissions. I don't think I've used more than my allotted time.

**The Chair:** That allows us approximately two and a half minutes per caucus. We begin with the government members.

**Mr Martiniuk:** Thank you very much for your presentation. I must say I've travelled the province interviewing both lawyers' associations and paralegals — outside of Toronto; I have not met with the Toronto group — and I am not aware at this moment of anywhere in Ontario where paralegals are appearing on criminal charges. It may be at this moment a problem that only exists in this jurisdiction, being the city of Toronto. You

said you were aware of one individual who has appeared in criminal matters recently?

**Ms McLeod:** Absolutely. His name is Maverick A. Maveric. I have transcripts. I personally saw him appearing before Judge Bentley and lying in old city hall about his record. He appears routinely. There are numerous agents who appear before the courts on a regular basis. Every day you will see them, day after day. They set up firms. They represent themselves. They have cards printed. If anybody wants to look at them, I have some of our submissions to the Lemonides case with cards where they've said "legal council." They've spelled "counsel" c-o-u-n-c-i-l. What does a client know? A client doesn't know any different. These guys represent themselves — they never say, "I'm a lawyer."

**Mr Martiniuk:** You're getting away from the question. I'm asking you to educate me. I'm looking for individuals who are appearing in Criminal Code matters who are not lawyers, because it is not the intent of this act to in any way provide the certificates to paralegals, simply because paralegals do not form part of the legal aid panel. Unless you're on the legal aid panel, of course, you do not get a certificate. I think you would agree that members of your association, and perhaps yourself, have used paralegals or law clerks in your work.

**Ms McLeod:** Yes, and that's why I think I make the difference between paid agents who appear in court, who stand up and say, "I'm agent for Mr So-and-so or Ms So-and-so." Paralegals in the criminal law field send shudders down people's backs, but it's probably better defined as "paid agent." "Paralegal" certainly encompasses paid agents.

**Mr Martiniuk:** But you do recognize that law clerks or paralegals employed by lawyers have often been used in many fields, including the criminal law. You have no objection to that?

**Ms McLeod:** I have no objection to them. I have objection to them essentially practising law.

**Mr Martiniuk:** You've given me one name. In what courts have you observed this happening? I'm talking about locations.

**Ms McLeod:** It's been in Brampton; Oshawa; Toronto, on frequent occasions; in all the bureaus, if I may call them that — the Toronto regional courts; I believe one in London that I'm aware of.

**The Chair:** We now move to the official opposition.

**Ms Castrilli:** You've raised a number of issues. You've set them out very well for us and I thank you. I want to focus on something that you mentioned but is not in your submission and that's the whole issue of the premises upon which our new legal aid system ought to be based. You obviously focused on judicare as the model.

As you know, this particular legislation was taken in part from the legal aid review that was done by Professor McCamus. It's his contention in his report that judicare as a stand-alone model doesn't work. He looks at jurisdictions south of border and to staff positions as the way to really deal with the "poverty community," as he calls it. I wondered if you might comment on that.

**Ms McLeod:** I can only comment from a criminal law perspective. That may well be the case in other areas, but certainly one's experience, or my anecdotal experience, from south of the border leads me to assume that the staff clinics, as they were, that man the criminal law field are a recipe for miscarriages of justice. Anybody who reads any of the problems that those lawyers have with lack of funding, lack of independence, the kind of workload that they have — it's a recipe for disaster, and of course the sanctions are much greater in the US than they are here.

We disagree with Professor McCamus on many bases, but that is certainly one of them. The judicare model in Ontario has been held up as one of the finest models of a delivery of legal aid services in the criminal field.

**Ms Castrilli:** Let me ask you some questions about funding of the system as it now occurs and, more specifically, how it will occur under the new legislation. If we take the legislation at its legal word, what we're talking about is a system which essentially is frozen in time for the next three years at what it is now, and we know that's a cutback from what we've had in previous times.

We had a lawyer in Thunder Bay speak to us yesterday. He came from the Kenora law association and he said: "It's really short-sighted to cut back, because what you're really doing is creating social chaos. What criminal lawyers and lawyers doing legal aid work do in fact is a lot of social work, and the money that you spend up front now, you save in the system later." I wonder if you could comment on that as well.

**Ms McLeod:** A criminal lawyer's job is not simply what you see in court obviously. Criminal lawyers do what they can to prevent recidivism. But the problem with freezing funding at a certain limit, and this has been debated for years, is that this is not a client-driven litigation experience. This is driven by an outside agency, to wit, the state, the police. It's driven by whatever directives come down from whatever government department saying, "You must crack down on X, Y and Z." The problem is, having such a fixed budget, and such a limited fixed budget, does not provide for those kinds of initiatives, if I may call them that. It does have many, many ramifications for us. In terms of the social structure, you're talking to a criminal lawyer, and we see it all the time. Our concern is, of course, that the lack of funding does not allow us to spend the kind of time we would ordinarily be able to spend to assist our clients.

**The Chair:** Thank you for coming forward today. We very much appreciate your taking the time.

**Ms McLeod:** Thank you for your time.

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ASSOCIATION DES JURISTES  
D'EXPRESSION FRANÇAISE  
DE L'ONTARIO

**The Chair:** We call our next presenters, the Association des juristes d'expression française de l'Ontario. If

you could come forward and identify yourselves for Hansard, we would appreciate it. You may begin.

**M. Tory Colvin :** Thank you, sir. Merci, monsieur.

Monsieur le Président, messieurs et mesdames les députés, je vous remercie tout d'abord de l'invitation. Je vous apporte l'heureuse nouvelle que cette présentation prendra bien moins de 20 minutes.

Je me permets de présenter M<sup>e</sup> Gérard Lévesque, notre directeur général, et M<sup>e</sup> Véronique Malka, une de nos membres de la ville de Toronto.

Nous sommes une association d'avocats, de juges, d'arbitres, de médiateurs et médiatrices, de fonctionnaires dans la justice, de professeurs non seulement en droit, d'étudiants et étudiantes, et d'autres qui ont un intérêt de promouvoir les services en français dans le système juridique ontarien. Notre association vise donc à assurer un accès égal à la justice, sans pénalité, délai, obstacle ou hésitation à l'utilisation du français dans l'appareil judiciaire.

Nous sommes heureux et reconnaissants aujourd'hui d'être parmi vous pour partager avec vous nos préoccupations à l'égard du projet de loi 68.

D'abord, je me permets de vous signaler que nous appuyons la création d'une société autonome pour fournir des services de haute qualité aux particuliers à faible revenu en Ontario. Compte tenu du mandat de notre organisme, nous limitons nos commentaires à l'aspect linguistique.

L'article 81 de ce projet de loi se lit, comme vous le voyez, que «La Loi sur les services en français ne s'applique pas à la société,» mais que le 1<sup>er</sup> avril 1999, cet article sera abrogé.

Pour nous, ceci représente un aspect positif de cette loi puisque, à partir du 1<sup>er</sup> avril 1999, la Loi sur les services en français s'appliquera à Aide juridique Ontario. Ceci représente une amélioration notable au présent régime, où les droits linguistiques sont, si vous voulez, une grâce accordée par la Société du barreau. Les justiciables auront donc le droit de communiquer dans n'importe laquelle des deux langues officielles et de recevoir des services avec l'administration centrale tant que les bureaux situés dans les régions désignées suite à la Loi sur les services en français.

Les services, cependant, au niveau de la communauté franco-ontarienne ne sont pas, à notre avis, adéquats. Il y a par exemple certaines cliniques juridiques qui sont en mesure d'offrir des services en français, mais il n'y a que trois qui ont été désignées, celles de Prescott et Russell, de Stormont, Dundas et Glengarry, et du Grand Nord. La demande de désignation de la clinique juridique de Windsor-Essex est présentement à l'étude.

Au cours des années, nous avons reçu des plaintes au sujet des manques de services en français dans certains de ces bureaux. Pour la plupart, il s'agit du manque de personnel apte à traiter des demandes d'aide juridique en français. Nous constatons aussi un manque de personnel apte à discuter avec des juristes représentant des justiciables d'expression française ou apte à répondre à la correspondance écrite en français. Nous avons constaté



aussi l'absence de formulaires et de documentation en français. Il y a eu également un manque d'avocats de services pouvant s'exprimer dans les deux langues officielles en Cour de l'Ontario.

Au niveau pénal, le droit de plaider ou de s'adresser en français existe malgré que ce soit une région bilingue ou non, région désignée ou non, puisque nous parlons, bien sûr, de lois fédérales. Donc, cet aspect d'avocats de services est bien au-delà des régions qui sont désignées suite à la Loi sur les services en français.

Pour tenter de remédier certains de ces problèmes, nous nous permettons de vous offrir quelques suggestions à la page 3 de notre mémoire.

Nous suggérons qu'il y ait une présence d'expression française à tous les niveaux du nouvel organisme, notamment au conseil transitoire qui sera créé le jour où la loi recevra la sanction royale.

Nous recommandons aussi qu'un comité des services juridiques en français soit créé, et qu'il soit représentatif des juristes et des cliniques juridiques offrant des services en français. Nous recommandons que ce comité des services juridiques en français assiste le conseil d'administration aux comités consultatifs créés pour tout domaine prescrit dans ses tâches de détermination des besoins, sur le plan juridique, des francophones à faible revenu, d'établissement des priorités et des politiques à l'égard du genre de services d'aide juridique à fournir en français dans les divers domaines du droit et pour les divers types de causes et d'instances.

Nous suggérons que le comité des services juridiques en français voit à l'évaluation des services d'aide juridique offerts à la population franco-ontarienne, assurant ainsi la prestation efficiente de services bilingues.

Nous recommandons que dans chaque région désignée en vertu de la Loi sur les services en français, il y ait au moins une clinique ayant le mandat de faciliter l'accès à la justice pour les francophones à faible revenu.

Cela fait, nous offrons notre collaboration et celle de nos membres pour favoriser la création et l'administration d'un système d'aide juridique efficient et efficace, en mesure d'aider les Ontariens des deux langues officielles à obtenir et avoir accès à la justice dans la langue officielle de leur choix.

Comme toujours, l'AJEFO est prête à travailler avec vous tant que possible pour assurer que la dualité des langues qui existe en Ontario soit maintenue et, en même temps, que nous soyons en mesure de vous assister.

Merci, monsieur le Président, madame et messieurs les députés.

**The Chair:** Thank you very much for your presentation. That affords us a little over three minutes per caucus. We begin with the official opposition.

**M<sup>me</sup> Castrilli :** Merci bien de votre présentation cet après-midi. C'est très clair, comme toujours.

Je veux poser deux questions. La première, c'est que vous parlez des cliniques qui sont maintenant désignées, mais ça ne comprend pas toutes les zones désignées, toutes les villes désignées. C'est ça ? Est-ce que vous pouvez parler un peu de ça ?

**M. Colvin :** Bien sûr, toute région qui est désignée suite à la Loi sur les services en français doit être en mesure de respecter cette loi. Donc, à notre avis, je dirais que les cliniques juridiques dans les autres régions désignées auront une obligation d'être en mesure d'offrir des services en français aussi.

**M<sup>me</sup> Castrilli :** Pouvez-vous, pour le comité, parler de ces régions désignées ? Où se trouvent-elles, par exemple ?

**M. Colvin :** Eh bien, la ville de Toronto est dans une région désignée et donc, forcément, devrait être en mesure d'offrir des services en français. De même pour la ville de London. Les autres régions — Windsor est dans une région qui est désignée bilingue aussi. Nous avons dans le nord-ouest la région de Thunder Bay, qui est désignée aussi. Donc, plusieurs parties de la province sont théoriquement sous l'obligation d'offrir des services en français.

**M<sup>me</sup> Castrilli :** On ne peut pas comprendre pourquoi il y a seulement, je crois, quatre régions qui sont désignées maintenant qui ont des cliniques ?

**M. Colvin :** Trois qui sont désignées et une quatrième qui est sous étude à l'instant.

**M<sup>me</sup> Castrilli :** Ce n'est pas beaucoup, hein ?

La deuxième question que je voulais poser est à l'égard de votre suggestion, comme vous l'avez notée. Quand je lis ce que vous avez présenté, le problème que je vois est que ce que vous proposez ne se traduit pas facilement dans ce projet de loi. Je voudrais savoir comment on pourrait incorporer ces recommandations dans le projet de loi.

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**M. Colvin :** Je dirais que le plus important, c'est que lorsque la loi parle des comités qui sont créés, la suggestion que nous avançons est qu'un comité pour les langues officielles pourrait peut-être aider la loi et pourrait peut-être aider à mettre en vigueur les aspects linguistiques, les obligations linguistiques, qui vont suivre ce projet de loi.

**M<sup>me</sup> Castrilli :** Ce comité de services juridiques que vous proposez est au sein du projet de loi ?

**M. Colvin :** Je dirais que c'est la meilleure place pour mettre un pareil comité. Cela dit, nous avons toujours été prêts à travailler avec les organismes ontariens, que ce soit sur un plan officiel ou non officiel, afin d'aider d'avancer la réalité linguistique en Ontario.

**M<sup>me</sup> Castrilli :** Est-ce que vous voulez la protection de la loi pour ce comité de services juridiques de langue française ? C'est ce que je vous demande.

**M. Colvin :** Oui, madame la députée, je dirais que ce serait avantageux.

**The Chair:** We go to the government members.

**Mr Wood:** I want to come back for a minute to the question of the clinics for each designated area. Have you done any work to ascertain what the minimum population is that's needed to support a clinic?

**Mr Colvin:** No, sir, I haven't. I don't know if Gérard has any background statistics on that or not.

**M. Gérard Lévesque:** À l'annexe du mémoire remis en deux tableaux qui viennent de Statistique Canada qui

montrent la population au seuil de faible revenu en Ontario, vous avez les tableaux les plus récents du recensement de 1996 qui indiquent, pour les hommes et les femmes en Ontario dans l'annexe A, et dans l'annexe B on définit par les âges également, l'ensemble de la population, au niveau des francophones, ceux qui sont au seuil de la pauvreté, donc qui rencontrent les critères pour obtenir de l'aide juridique. C'est réparti également par région et c'est disponible pour les principales agglomérations de l'Ontario.

Comme vous le savez, le seuil de pauvreté varie dépendant de la taille de la famille, d'une part, et également de l'importance de l'agglomération. Statistique Canada fournit tous les détails. On peut voir qui sont les gens en Ontario qui sont au seuil de la pauvreté et on rencontre ainsi le critère pour bénéficier d'aide juridique s'ils ont besoin de services juridiques.

**Mr Bob Wood:** What I didn't see in the material — maybe it's fair or maybe it's not or maybe you've done some research that's not in the material: What is the minimum population that you think is needed to support a legal clinic? Have you looked at that issue at all?

**M. Lévesque :** Pas pour créer des cliniques, mais ici la recommandation n'est pas de créer des cliniques. C'est de s'assurer qu'au sein des cliniques qui existent, il y en a suffisamment pour répondre au besoin dans chacune des régions désignées. Sinon, il faudrait créer presque du jour au lendemain une vingtaine de nouvelles cliniques pour desservir le besoin des francophones si on demandait la création immédiate d'une clinique désignée en vertu de la Loi sur les services en français. Mais il y a dans plusieurs cliniques une capacité bilingue à l'heure actuelle qui pourrait être utilisée pour répondre à l'objectif qu'on a identifié, de faire que dans chaque région désignée en vertu de la Loi sur les services en français, il y ait une clinique qui soit en mesure de promouvoir l'accès à la justice pour les gens à faible revenu qui sont d'expression française.

**Mr Colvin:** In other words, sir — that's why I passed the question to Gérard — I don't think we've done any studies in terms of population versus numbers of clinics. Our association has essentially looked at the idea of French-language services rather than population-to-clinic ratio.

**Mr Bob Wood:** Am I picking up from what you're saying — maybe I am and maybe I'm not — that you don't necessarily see a clinic in every bilingual region; that you see a capacity to provide service in every bilingual region? Is that what I'm picking up, or am I missing it?

**Mr Colvin:** I think essentially what we would be looking for is a bilingual capability in each region. If it's impractical to have let's say a clinic in Pickle Lake, there is likely some clinic support for Pickle Lake that might come out of Kenora or Dryden or some such. If that is in a designated area, designated under the French Language Services Act, then whatever that service area is, it should be in our view capable of providing services in French.

That's probably a bad example, because I believe it's in the Rainy Lake area, which isn't designated, but if we use Armstrong in northern Ontario, which is in Thunder Bay, it would be a prime example. It wouldn't have a clinic but Thunder Bay itself might. It's a designated area, therefore the clinic in Thunder Bay that serves Armstrong should have an ability to offer services in French as it's part of that designated area.

**The Chair:** Thank you for coming forward today. We very much appreciate your taking the time.

**Mr Colvin:** Nice to see you again.

#### ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED

**The Chair:** We'll call our next presenters, if the representatives of the Advocacy Resource Centre for the Handicapped could come forward. If you could identify yourselves for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Ms Giselle Cole:** Thank you. Good afternoon. I'm Giselle Cole. I'm the first vice-chair of the board of directors for ARCH, which is the legal resource centre for the handicapped. It's our pleasure to be here this afternoon.

ARCH is a specialty clinic. Before I even go any further, I apologize to my colleague. This is David Baker, who is the executive director at ARCH.

ARCH is a specialty legal clinic. It was mentioned earlier that there is such a thing. We serve the community of disabled persons across the province. We try to provide service for a wide range of disabilities and groups, cross-disability. We're talking cerebral palsy, mental health, the kidney association, the Thalidomide Victims Association of North America, those kinds of broad-range, cross-disability groups.

We're very proud of the reputation that we have garnered for our work in disability law — I'd like to think we're world-renowned — and have managed to produce a lot of very good works around the province and the country.

We're a very diverse group of people with many needs, and how we have chosen to go about it is we've pooled the community. We have 62 member groups and our board of directors is regionally representative of that membership. Being cross-disability, one of the things that we have done as an active board is we've taken the needs and the priorities of the communities as they have presented them to us at various forums: membership meetings, our annual general meeting and so forth. Of course, these priorities change periodically, but fundamentally they are basically the same and, until we can address the complete issue of barrier removal, they will never go away.

We've looked at assessing that and strategizing our plan of attack in order to meet the needs, and to maintain our quality of service we quite often have independent reviews to ascertain that we are in fact meeting those needs.



We provide a varied and wide range of services. We deal in public education: education of lawyers, up and coming as well as established. For instance, a few months ago I had the privilege of speaking at the bar eds at Osgoode on Disability Day, in which ARCH takes a leading role and had an entire day spent discussing disability issues.

We deal in legal policy. We give legal advice over the telephone as well as referrals to other clinics and lawyers. We have various publications. We have ARCH\*ALERT, which is quick summation of something that is happening immediately, and our ARCH\*TYPE, which is more of a concise quarterly report of what is going on with the law and disability.

We have a program for training the trainers. Those are people who do front-line work in various community clinics, law and other clinics, and we provide them with the basis of understanding certain issues pertinent to their clinics in regard to disability. Most of that is preventive work, trying to minimize the expense.

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Of course, our most important function is litigation. Litigation obviously is the most expensive, not only in terms of dollars but in time. But it is a fundamental part of who we are.

We cover a broad range of areas of law that have been identified by the community. We find that these areas are very important to the lives of people living with disability. We're talking about barrier removal, access to education, income, health issues, education and, more often than not, income tax — a very confusing issue about your rights and entitlements there.

We recognize that it's very important for the community to be involved and that there must be accountability to the community we serve, not just so that we will use government dollars wisely, but our hope is to attract a good, solid volunteer base and availability to resources and other connections.

Finally, in my role as chair of the ethno-aboriginal outreach committee for ARCH, one thing has concerned me about this legislation: We support the ACLCO's position on legal aid for immigration and refugee law. When you throw in the component of a disability or the potential for disability, it is an area that certainly need not be left out.

**Mr David Baker:** The ARCH board of directors is generally supportive of the position you've heard this morning from the ACLCO. We also agree with the comment by Derry Millar on behalf of the law society legal aid committee this morning, that the Attorney General has generally done what was recommended in the McCamus report and what he promised to do with respect to clinics. So we're expressing general support for the legislation.

We would like to comment on two specific areas, aside from immigration and refugee, which Giselle has mentioned. Clause 13(3)(e) gives the broad power to make exclusions from the areas covered by legal aid. As Giselle mentions, in terms of disability, the range of areas of law

that we cover are much broader than might be anticipated. She mentioned income tax, which I think most members of the public would not understand to be an area of poverty law or something that would affect people with disabilities, but it's actually a tremendously important area for many people, particularly families caring for members with disabilities. We cite that as one example of the importance of maintaining flexibility. Particularly in the area of disability law, we would be concerned about retaining clause 13(3)(e).

The other area we'd like to address with you is the inclusion, for which we commend the government, of mental health law as one of the areas. I don't believe you will hear from representatives of the mental health community, specifically from either the bar or from people who have mental health problems, but certainly ARCH has historically been concerned and has worked to establish adequate legal representation for people with mental health problems. It's a group that has a great deal of difficulty articulating its needs, which in and of itself, in some measure, we feel explains why people require legal representation when they have problems with the law.

There is a broad range of legal issues legislation which this government and others have worked to establish that relate to the liberty of individuals, the treatment they receive, the choices they make about where they will live, who they will associate with and, of course, their property. These are fundamental areas that most of us take for granted, and most of us have an ability to self-advocate or speak on our own behalf with respect to these issues. For a group that has difficulty, particularly in acute periods, we feel it's tremendously important that the legislation have the recognition that is in subsection 13(1), that the legal services which are relatively recent in their origins, going back just to the late 1980s and early 1990s, are reflected in the legislation and will be continued.

Those are basically the submissions ARCH wishes to make.

**The Chair:** Thank you very much for your presentation. That allows us a little over three minutes per caucus. We'll begin with the government members.

**Mr Martiniuk:** Is your funding totally from legal aid, then?

**Mr Baker:** No, there's funding from the Ministry of Citizenship for an information service that was established by the current government, and which we opened I guess in 1997. So there's an information service in non-legal areas that is part of our mandate. There is funding from a variety of other sources. Giselle has mentioned volunteer services, which are also part of the service we deliver. We've been able to persuade a number of lawyers to offer their services pro bono to members of the disabled community. There is some funding from the city of Toronto in support of the publications, which Giselle mentioned. Those are the primary sources.

**Mr Martiniuk:** I'm trying to be educated as to your organization. Do you consider your board of directors as representative of the community?

**Ms Cole:** I would say so. We represent many groups across disability. There are 13 or 14 of us on the board of directors from across the province. We like to think that we represent various areas of disability.

**Mr Martiniuk:** In that you represent people from across the province rather than a locality, how large is your staff?

**Ms Cole:** Not big enough by a long shot.

**Mr Martiniuk:** How small is your staff?

**Mr Baker:** The funding from the legal aid plan funds eight and a half positions, of which six are currently lawyer positions. Through our fundraising we have added some support staff: a receptionist and the other half of the secretarial position that's not funded. Then there is the information service, which I mentioned the Ministry of Citizenship initiated funding for in 1997.

**Mr Martiniuk:** Other than your board of directors, is there a volunteer group or is that not something that can be worked into this type of operation?

**Ms Cole:** Committees are normally chaired by board members, and we recruit volunteers to sit on those committees because those of us on the board sit on a number of committees. I think I sit on three. We do try to pull outside resources where we can, but that wouldn't be plausible to effect the business of ARCH on a day-to-day basis.

**Mr Martiniuk:** Lastly, what is a representative type of litigation that your organization would assist with, if there is such a thing?

**Mr Baker:** That would be very difficult because of the broad range of areas. We've mentioned education. Again, it's not that well understood, but children with special needs have entitlements to representation under the Education Act. The mental health area is another. Transportation is another. Federally there are mechanisms for addressing problems people have when their wheelchairs are broken or whatever when flying. Employment areas: people who have difficulty getting employment, staying employed and often are terminated because of their disability. That would be a preliminary attempt at describing it.

**The Chair:** We'll move to the official opposition.

1400

**Ms Castrilli:** David and Giselle, thank you very much for being here and giving us your views. I want to say to my friend Mr Martiniuk, with no offence to be taken by members of the committee, I hope, that your group is far more representative than the members of this community are.

I want to ask a couple of questions with respect to your presentation. One deals with a presentation we had yesterday in Thunder Bay by PUSH Northwest, part of the disabled alliance network. They pointed out that currently 84% of all legal aid certificates go to criminal law, which therefore means there's very little available for everybody else. It comes down to a question of funding. Of the 16% that's left, what is your share? It's probably not very big. They worry, of course, that a lot of cases fall through the

cracks, people who need to assert their rights and often don't because they don't even know that they have rights.

My question to you is: Given what this act says about funding, are you satisfied that you're going to be able to meet the needs of the community you serve?

**Mr Baker:** I think the establishment of an independent decision-making body is of prime importance, certainly to start off. In criminal law, there are of course a significant number of people with disabilities. I would say they are proportionately represented. At least Mr Kormos, if not other members in the committee, would be aware that people with disabilities are in need of legal representation in the criminal field. There are huge areas of law that have not been addressed through the certificate programs, and community clinics are not yet providing services in those areas. We continue to urge that clinics look at those issues. We've had some success in going to the provincial director of legal aid and getting emergency certificates in particularly acute areas.

We've made representations — and this was a prominent part of the McCamus report, which is not fully represented in the bill. I mentioned the mental health area, but there are a number of people with developmental handicaps and others who, because of their disabilities, have a greater degree of difficulty representing their own interests. Assumptions that are made when issuing certificates need to take those kinds of special needs into account. We hope the new legal aid commission will more fully address that. We hold out some hope that this body will be responsive, recognizing that there aren't all the guarantees one might like in the legislation.

**Ms Castrilli:** I'd like to be as optimistic as you and hope that the funding won't be an additional barrier. Let me ask a question, because I know the Chair is going to step in at any moment. The bill talks about geographic representation on this board. Does it trouble you that that's the only criterion, that they're not really talking about demographic representation but about geographic representation? Do you have any comments on that?

**Mr Baker:** Certainly the disabled community is a very high percentage of the low-income community in this province. There's no question about that. It's also a very diverse community within itself. Giselle has explained the range of disabilities that exist. While one would hope that someone with a particular disability might have sensitivity and some awareness of other disabilities, that isn't always the case. If the committee felt that particular low-income communities such as the disabled community should have some representation on the board, I'm sure the ARCH board would not take exception to that. Obviously it isn't something we've addressed in our presentation.

**The Chair:** We move to the third party.

**Mr Kormos:** At the end of the day, this all comes down to the fact that the bill has no minimum standards in terms of a level of legal aid services to be provided. There is nothing in the bill that sets the bottom level, and there's nothing in the bill that requires a government, this one or any subsequent government, this one or the one that's



going to be elected six months from now, to fund that minimum level of legal aid.

In view of the fact that there's a guarantee in the legislation of stable funding for the clinic program for three years and stable funding of refugee certificates for two years but no inclusion of even a time frame in which there's stable funding, only the minister's promise, the minister's commitment, my concern is that this or any subsequent government will do through the back door what they wouldn't dare do through the front door, and that is to shut it down by simply defunding it, unless the corporation has a means of enforcing a minimum level of funding that would provide a minimum level of services. How do you respond to the absence of any minimum standard or any guarantee of funding for the overall plan?

**Mr Baker:** I think the ARCH board of directors and membership would say that there certainly is recognition within the disabled community of the importance of legal aid. We heard you this morning talking about difficulty in communicating to the public the importance of legal aid, and I think that's a responsibility the disabled community feels it needs to address. There would be no quarrel if it were possible to build into the legislation the kind of guarantees that I think you are describing. I remember the late Chief Justice of Canada, Brian Dickson, talking about how the courts are starting to address the issue of guarantees. This may be something that will be necessary if adequate levels of funding are not provided.

Certainly in the criminal and mental health areas we know that the courts have already made statements about the essential nature, in order to have charter rights protected. Whether the courts will be an adequate guarantee in the long term remains to be seen as well. Ultimately, I think that the community that benefits from legal aid needs to communicate. The needs of some communities are going to be listened to and understood better than others, and those communities particularly must speak to the public about the importance of legal aid.

#### COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION

**The Chair:** Our next presenter is the County and District Law Presidents' Association. Would you come forward and identify yourself for Hansard. Thank you for coming, and you may begin.

**Mr David Sherman:** My name is David Sherman, chair of the legal aid committee of the County and District Law Presidents' Association. A brief has been distributed which sets out the substance, and in fact probably goes on at greater length than I will about the position CDLPA advances with respect to Bill 68. As well, I have attached to that submission what is described as an orienter or background orientation document, which will give you much greater information as to what the County and District Law Presidents' Association is.

It's not my expectation that you will read that during this submission, and so I should indicate that the County and District Law Presidents' Association is an umbrella

organization that represents the 46 law associations that lie outside the city of Toronto. The province of Ontario is divided into 47, and the 47th is of course Toronto. Regrettably, Toronto is not a member of our organization. For the most part, these associations are made up of practising lawyers in each of the 46 counties outside Toronto. Their memberships range from modest memberships of 45 or 50 lawyers to well over 1,000 lawyers. We represent the bar from as far away as Rainy River, down to London and out to Ottawa.

In general, I wish to state that the County and District Law Presidents' Association has always been very actively involved in the delivery of legal services under the existing Legal Aid Act, that in fact we're committed to the provision of high-quality legal services as defined both in the existing legislation and in the proposed legislation, and that we have worked closely with the administration of legal aid in delivery models and pilot projects. We're very supportive of much of the McCamus report and significant aspects of the proposed legislation. We particularly applaud the description of purpose and the statement of objects in sections 1 and 4 of the act.

#### 1410

We have some concerns with the composition of the board. Under section 5, in terms of recommendations from the Law Society of Upper Canada and the Attorney General, of the 10 members of that board, five are nominated or proposed by each group. It is respectfully submitted by our organization that the Law Society of Upper Canada, being the governing body of the profession, is not necessarily representative of lawyers throughout the province. and indeed in terms of the geographic diversity recognized in the act, it is our suggestion that the County and District Law Presidents' Association is ideally suited for the purpose of ensuring representation in terms of geographic diversity of counsel, given the nature of our grassroots organization, that is, representing the 46 law associations that are spread across the entire province.

Of additional concern with respect to section 5, there is no provision in terms of the lawyer appointees to the board that they have some experience in the delivery of legal aid services, and in fact it's not contemplated. Indeed, at a recent dinner the Attorney General seemed to suggest that having lawyers on the board who deliver legal services under certificates was to be avoided, largely as a consequence of avoiding the resource conflict that has arisen in the past between the family bar and the criminal bar. It is the position of CDLPA that it's critical to a perspective of appropriate delivery to in fact ensure that the lawyers, at least two and preferably three of the lawyers appointed to the board, have experience in delivery of legal services under the certificate system.

To touch on advisory committees, it would appear that it's contemplated that there will only be three advisory committees, that is, an advisory committee in the area of criminal law, family law and clinic law. I recognize that the act provides for other prescribed areas of law and that mental health law is one of those prescribed areas of law, but for reasons that are not entirely clear, mental health

law is left out of that definition. It is the position of CDLPA that it should return to that definition or be specifically stated and that there should be an advisory clinic in the area of mental health law.

It is additionally our position that the advisory committees would be best set up not as a central provincial committee in and of itself, but rather on a regional basis. That in turn moves into our position with respect to the division of the province into areas.

The proposed division into areas appears to mirror the existing areas and area committees that are currently operating under the act. Those area committees are made up of members of the community and lawyers within those communities. It is CDLPA's position that that provides a wonderful resource of people who have long experience in the delivery of services under the Legal Aid Act from whom members could be secured to sit on regional committees, and then from those regional committees perhaps an appointee or two appointees could then move on to the provincial advisory committee. In effect, we're proposing a pyramid scheme of advisory committees so that the fundamental street level delivery of legal services is communicated up to the provincial panel so that the provincial panel has more than just a principal perspective of delivery of services in the province but in fact has a clear recognition of what it's like in the trenches and what the needs of the community are on the street, as opposed to here in Toronto.

Methods of providing legal services: One of the grave concerns that CDLPA has with respect to the provision of legal services is the definition of legal service-providers, including the phrase "paralegal."

As no doubt all of the members of this committee are aware, in January of this year the Attorney General began a review of paralegal activity in the province, prompted at least in part by a submission by the Paralegal Society of Ontario that they were actively seeking regulation. They wish to define the parameters of their activity and to become a self-regulating body. This coincided with the work of a number of ad hoc committees out of the bar on paralegal issues.

In June, a committee was established by the Attorney General for the purpose of studying the issue. That committee was made up of CDLPA representatives, CBAO representatives, Seneca College, the Institute of Law Clerks of Ontario, the Paralegal Society of Ontario and various government lawyers. Two subcommittees were created. Those reports are finalized. They've been submitted to the Attorney General's office. Recently the Attorney General indicated that these reports are under consideration and he is moving forward with respect to consultation with a variety of interested organizations.

I would like to point out that in a March 1997 position paper advanced to the Attorney General by the Paralegal Society of Ontario the question was posed, "What is a paralegal?" The response was, "A widely accepted definition of a paralegal has not been established." The report of the paralegal society went on to state: "Paralegals are currently operating without standards of

practice, disciplinary procedures, or mandatory insurance requirements. Implementation of such measures would ensure that the public is protected from incompetent or unscrupulous individuals."

I recognize that the legislation provides for supervision by a lawyer and specifically says that a paralegal shall not deliver unless under the supervision of a lawyer. However, the act does not define what "under the supervision" means. It does not describe how many paralegals may be represented by a single lawyer. It provides for the establishment of paralegal panels. It gives the mandate to area directors to select membership for those panels but does not define any criteria for selection or qualification. The area directors are left in the unenviable position of existing in a vacuum as to who or what is a paralegal. What qualifications do they need to be entitled to receive a certificate? None of those qualifications exists in the act, and the area director is left without any guidance as to how to empanel these members.

The panel itself is open to paralegals who have an existing practice or an office within the community. With respect, it seems to imply that it's not anticipated that the paralegal will have to work within the office of a lawyer or under the direct supervision of a lawyer, but in fact can have an independent office, hang out a sign that says, "Legal aid accepted," and somehow work out an arrangement with an off-site lawyer for the undefined supervision.

There is no regulatory body for paralegals. If some difficulty arises with which the public is concerned and a complaint must be advanced, the only person or body to whom the complaint can be advanced is to the corporation or to the area director and the only penalty that can be imposed is removal from the panel. They are not subject to discipline by any governing body whatsoever.

A further difficulty is with the delegation of responsibility. Currently, if a lawyer has a law clerk or a secretary and work is assigned to those individuals on a file representing a client, those individuals are supervised directly by the lawyer. A paralegal, on the other hand, may find himself or herself delegating work to a secretary or clerk for completion, and as a consequence the supervision, whatever it ultimately may be, is diluted significantly.

It's acknowledged that during the crisis in legal aid a few years back there was difficulty in some members of the public accessing lawyers, particularly in the area of family law. There were many reports of individuals walking the streets with certificates, going to a number of law offices and finding lawyers refusing to accept them on the basis of a certificate. I would suggest, with respect, that that situation no longer exists. There is currently no shortage of lawyers who are prepared to do legal aid services work.

As a consequence, I would further suggest that the inclusion of paralegals in the definition is a cost-saving measure and a cost-saving measure alone. For the reasons I've already given, I would suggest it's premature, given the unregulated field from which paralegals come and the



uncertainty of what even constitutes a paralegal. It's ill-advised and I would suggest that until such time as the Attorney General moves forward in establishing some regulatory scheme for paralegals or the paralegals, through a coordinated effort with the bar and other groups, advance an acceptable model for regulation themselves, the only response that would be reasonable is to remove paralegals from the definition of service-providers under the act.

I believe I've used up my 10 minutes, so I'll stop here.

**The Chair:** It's a total of 20 minutes.

**Mr Sherman:** Oh, I can go on for 20 minutes.

**Mr Kormos:** We get to ask questions and you get to respond, if you stop now.

**The Chair:** If you so wish.

**Mr Sherman:** I understood that you'd like to break it up into —

**The Chair:** The choice is yours.

**Mr Sherman:** I'm prepared to stop now and entertain questions, and if there are none, I'll continue on.

**Ms Castrilli:** There are some.

**The Chair:** Thank you very much. You leave us approximately three minutes per caucus and we begin with the official opposition.

**Ms Castrilli:** Thank you very much. The time allotted never allows for the exploration of in-depth papers like yours. I know we all feel very badly about that.

I've heard this before about paralegals. The Criminal Lawyers' Association in fact brought this issue up earlier. Are you aware of legal aid certificates actually going to paralegals?

**Mr Sherman:** No. Under the current act?

**Ms Castrilli:** Yes.

**Mr Sherman:** No. In fact, the Attorney General raised that a few weeks ago and I was somewhat taken aback by his suggestion that certificates are being issued directly to paralegals. My understanding of the existing act is that it's not provided for.

**Ms Castrilli:** I'm having trouble understanding why it would be an issue. Let me take you back to Professor McCamus's report, because that's the genesis of a lot of this. In his recommendations in his report he talks about a diversity of models for delivering legal aid services. He specifically talks about staff lawyers and supervised paralegal components. I don't know if you've had an opportunity to read that section, but I'm wondering why there would be such diverse views within our legal community on this issue.

**Mr Sherman:** It is my view that McCamus in his report when describing paralegals was being somewhat generous in his definition. What he was referring to and including in the definition of paralegals would be what many counsel currently look upon in their offices as law clerks and other individuals who have been trained and are truly acting as an aspect of a law office itself, not the type of paralegal activity that's contemplated by this act.

1420

What is of concern in this act, and I think it's most greatly reflected in the establishment of panels of

paralegals with independent offices under the authority of the area director, is that really what they're looking to is the delivery of some form of legal services by way of independent paralegals, as opposed to a paralegal who is employed. That term "paralegal" covers a broad range of activities and a broad number of different individuals offering different legal services.

It's my view that what McCamus was describing was in fact an individual who was employed directly in an office, such as a staff office, or directly within the office of a lawyer and who could perform services under the direct supervision of that counsel. That was then in the interests of the public. My preference, frankly, would be that the certificate in those circumstances be issued to the lawyer, primarily because then it, if you will, puts the lawyer directly on the hook in terms of negligence and responsibility for protecting the interests of the client.

If a certificate is issued directly to a paralegal under the general supervision of a lawyer, the question arises, who is responsible in the event negligence arises? Is it the corporation that's responsible? Is it the supervising lawyer who's responsible? What remedy does the client have if the action is badly handled? That's not at all clear.

**The Chair:** We now move to the third party. Mr Kormos.

**Mr Kormos:** I do want to indicate that in this whole proposition of unregulated paralegals, I agree the language "premature" that you use is probably the most generous language that could be used, and you're not the only source of that comment. But at the end of the day, this is all about adequacy of funding, isn't it?

**Mr Sherman:** No. At the end of the day it's, in my view, sir, all about the proper administration of justice and ensuring that the citizens of this province are protected under the umbrella of the rule of law. I agree with you entirely that if funding is inadequate, we're going to fail in that effort. My concern is that in order to meet inadequate funding levels, the government may turn to a service delivery model that does not achieve that prime principle of ensuring that the public of this province is protected on an appropriate use of the rule of law.

Turning to paralegals who are not trained, not regulated and of uncertain qualifications to perform the task of delivering legal services is an avoidance of the obligation of the government of this province to ensure that our citizens have appropriate legal representation. I don't mean to belabour this point but, although we are dealing with the poor and disadvantaged, I think it's important to acknowledge that their rights and their needs are every bit as legitimate as people of independent means. People of independent means get to hire a highly qualified lawyer and the disadvantaged get to use uncertain, untrained paralegals.

**Mr Kormos:** I agree with you in every respect. My concern is that this government and subsequent governments are going to do through the back door what they can't do through the front door, and that is effectively defund legal aid.

I put this to you. You, like every other Ontarian, and I don't know what your income level is, have received a 30% cut of the provincial portion of your income taxes. Would you be prepared to forfeit that cut if it meant adequate funding of legal aid plans, among other things?

**Mr Sherman:** Given the extraordinarily modest needs of the administration of justice in this province, I don't think it would come anywhere close to needing to forfeit the 30%. But in response to that question, yes. With respect, I find shocking the funding levels that are given to the administration of justice in this province when compared to other areas. The amount of money that the province spends, \$25 million, sounds like a great deal of money but not when compared to the balance of the budget. We do not spend a great deal of money on the administration of justice in this province. It wouldn't take much of a modest reduction, and that 30% tax relief that you described would more than adequately fund the administration of justice in this province.

**Mr Kormos:** Heck, if all of it were rolled back for only those 6% earning more than \$80,000, we could restore funding to health care; we could restore funding to public education; we could adequately fund a legal aid program. Sounds good to me.

**Mr Sherman:** I wouldn't disagree with you.

**The Chair:** We move to the government members.

**Mr Martiniuk:** Thank you for your presentation. It's most informative. I take it your interpretation of the act as it stands is that paralegals could be awarded a legal aid certificate.

**Mr Sherman:** I think it's absolutely clear in the legislation, yes.

**Mr Martiniuk:** That's your opinion?

**Mr Sherman:** Indeed. When you look to the section that deals with service delivery, it talks about service-providers being granted certificates. I believe you will find that under clause 14(1)(b): "The authorization of service-providers, by means of certificates, to provide legal aid services to individuals or groups of individuals." If you return to the definition section of the act, "service-providers" are defined to be paralegals and mediators.

If you then move on, clause 23(1)(b) describes, "The area directors may establish, in accordance with the regulations...panels of service-providers who maintain an office or have an established practice in the area and who agree to accept certificates to provide legal aid services;"

Again, the definition of "service-providers," when you return to that definition section, "means a person, other than a lawyer, who provides legal aid services, including a paralegal and a mediator;"

**Mr Martiniuk:** OK. I'm interested in your opinion as set out on page 2, dealing with the composition of the board. I take it you wish the law society nominees or recommendations be reduced to two and that three be recommended jointly by your organization and the CBAO. Is that correct?

**Mr Sherman:** That's correct.

**Mr Martiniuk:** I understand there are ongoing discussions regarding amalgamation between your — how long have those been going on?

**Mr Sherman:** Those negotiations have been in progress for almost two years.

**Mr Martiniuk:** Have they? Well, they must be near the end.

**Mr Sherman:** I would hope so.

**Mr Martiniuk:** I certainly would too. I'd like to see lawyers co-operate together; it would be refreshing. But the remaining three, is this some reflection on the law society and their recommendations?

**Mr Sherman:** With respect, I'd suggest that the suggestion of the remaining three is not so much an adverse reflection on the law society as rather the view that the law society is predominantly Toronto-centred and urban-centred and does not necessarily reflect the needs of the province as a whole. County and District, on the other hand, because of its far-flung associations — the north-west is a wonderful example — is in a much better position to meet the geographic diversity that is recognized in section 5.

Of interest, I can't speak for the Canadian Bar Association but, in the County and District association we operate on the principle of one association, one vote. As a consequence, a small association such as Kenora that has 100% membership, and that makes up about 45 lawyers, represents a huge geographic region in this province and has the same power and sway before our executive board and our plenary sessions as an association such as Ottawa that has many thousands of members. That is designed specifically within the context of CDLPA to ensure that there is an equal voice from each area of the province, recognizing the very disparate needs between a remote, rural area of the province and a highly urbanized centre such as Ottawa or London or Hamilton.

**Mr Martiniuk:** That's exactly the right answer for a person with a practice outside of Toronto for 30 years.

**The Chair:** Thank you very much for coming forward today. We very much appreciate that.

## ABORIGINAL LEGAL SERVICES OF TORONTO

**The Chair:** We call on our next presenters. If the representatives of the Aboriginal Legal Services of Toronto could come forward and identify yourselves for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Mr Jonathan Rudin:** Thank you very much. My name is Jonathan Rudin. I'm the program director at Aboriginal Legal Services of Toronto. With me is Kimberly Murray, who's the director of the legal clinic at Aboriginal Legal Services of Toronto.

We'd like to thank the committee for allowing us to make the presentation today. We have distributed a brief summary of our presentation. We're here in particular with reference to clause 14(1)(f) of the proposed Legal Aid Act which states that the legal aid corporation "shall



provide legal aid services by any method that it considers appropriate," including subsection (f): "The funding of aboriginal legal services corporations is to provide legal aid services to aboriginal individuals in communities."

I'm not sure, but I suspect we will probably be one of the few, if not the only, organization here to speak on this issue, and we would like at the outset to say that we think this is a very good suggestion to put into the act. We have some suggestions that Kimberly will be talking about in a moment about how to integrate that more fully within the act.

1430

I thought I would briefly talk about our organization, because it is, I think, the model for the notion of an aboriginal legal services corporation. Aboriginal Legal Services of Toronto, in its initial planning, was meant to be a one-stop location for aboriginal people in conflict with the law in Toronto. The planning was done by the Native Canadian Centre of Toronto in the late 1980s. The vision for the organization was one that would have within it both services for aboriginal people in conflict with the law, such as aboriginal criminal and family court workers, a program that is currently funded by the Ministry of the Attorney General along with the Federal Department of Justice; family and young offender court workers, funded by the Ministry of Community and Social Services and the Federal Department of Justice; as well as a legal aid clinic providing the range of poverty law services that clinics provide; as well as services specific to aboriginal people in a variety of issues, and Kimberly will probably talk about some of those; also, the provision of family and criminal law services as well. The idea was that all these programs would be under one roof.

At Aboriginal Legal Services of Toronto, when we were funded, when we were created, the clinic funding committee told us in no uncertain terms that we could not have criminal or family law services provided at our organization, so at this point we do not have that.

In addition, in terms of our organization, we also have an alternative justice program, known as the community council, which has been functioning since 1992. It's an alternative criminal justice process, the first one of its kind in urban areas in Canada, that is funded by the Ministry of the Attorney General and the Department of Justice.

The idea for having an aboriginal legal services centre such as ours, and I believe the idea behind including this in the legislation, is that aboriginal people have particular legal needs that are best served by an organization that represents aboriginal people, is comfortable and is welcoming to aboriginal people. The more people can access a range of services in one place, the less likely it is that anyone will fall between the cracks and be lost. I don't think we have to go into detail for this committee about issues in terms of aboriginal people and overrepresentation in the criminal justice system, as well as in family, young offenders, child welfare and a whole range of issues.

The idea behind the aboriginal legal services centre, and why this seems like such a good idea to us and we

were so happy to see this in the legislation, is that it would allow for the creation of other organizations such as Aboriginal Legal Services of Toronto across the province. It would also allow for one organization to provide all the services. I would just let the committee know that ALST as an organization was forced to break up into two corporate entities last year, by the clinic funding committee in particular, which was concerned that the vulnerability of the non-clinic programs to funding cuts might mean that if we were one organization we could default on our lease or something like that. We now have two organizations in one location, with the same board of directors sitting in two areas. We pay double insurance — you know, slip and fall insurance — and everything, and we have two photocopiers. It's not exactly the ideal situation.

I will turn to Kimberly now to talk about how to integrate some of these suggestions specifically in the legislation.

**Ms Kimberly Murray:** As Jonathan said, I'm the director of the legal clinic portion of our services, and we're funded by the Ontario legal aid plan. The services we provide are very similar in a sense as the other clinics', and I think you've heard from other clinic representatives; we do the welfare cases, the employment law cases etc. But we also have a strong component where we do aboriginal rights issues. We've appeared before the Supreme Court of Canada a few times this year on aboriginal-specific issues. We do a lot of work under the Indian Act.

On top of the work we do in Toronto, we get calls from all over Canada to our services. We get calls from all over Ontario from the other clinics, when people have aboriginal clients and they need some assistance and guidance on where to go and how to work with the Indian Act. We're very pleased to see this section in the bill that recognizes the unique nature of aboriginal people and the legal needs they have.

One of our concerns is that now we have this in the act, we want to make sure it's implemented correctly. Our first concern is with the board of directors of the corporation. We'd like to see in section 5 that there be a recommendation that one of the board of directors be an aboriginal person.

The history of our services and why we were created is because aboriginal people weren't going to the other legal aid clinics in Ontario. Part of that reason is the cultural experience of going to those other clinics; there's a cultural clash. We feel that in order to develop proper aboriginal legal services, we have to have at least one aboriginal person on the board of directors who understands the legal needs of the community.

In turn, that leads to the recommendations with respect to the advisory committee. If we're going to set up the aboriginal legal services, we need an advisory committee that understands the specific legal needs of the aboriginal community, specifically the needs that Jonathan mentioned earlier.

The other concern we have — as Jonathan mentioned, we are this combination of different services with different funders, so we don't really fall into any of the categories

under section 19 or section 33 of the legislation, which deal with the staff office model and the clinic model. We would like to have criminal and family law lawyers on staff so we're sort of a combination of the staff model and the clinic model. In turn, we don't want to have our criminal and family lawyers hired by the corporation; we'd like to have those people hired by our board of directors at Aboriginal Legal Services of Toronto so they can determine who is the most qualified to provide the legal services to the community we service.

Finally, the last concern we have is with the monitoring and funding of the aboriginal legal services. Because we're not similar to the other clinics — because we're not identical to them and we're not identical to, say, a staff model — we don't feel we can be judged or assessed according to the quality assurance program next to a non-aboriginal service that exists in Ontario. You can't put a clinic next to us and compare us to that clinic because we're so different. It's important under the bill that when quality assurance programs are being operated, they don't apply the same cookie-cutter method to our clinic, because it doesn't work. We've had numerous problems with our funders and conflicts because of what we were being compared to.

Jonathan has another recommendation.

**Mr Rudin:** We've suggested a couple of additions to the act. In the interest of saving trees, we also have a suggestion for taking something out of the act. We have a great concern about section 16 of the act, which says the corporation is entitled to place an application fee for people who are applying for legal aid. There is currently no application fee for legal aid, but that was in place for a number of years, and we can tell you from the point of view of our clients, and not just our clients but from across the province, that the effect of the application fee was to deny access to people who had a perfect right to legal services.

The application fee is not a way to raise revenue. If the concern is to raise revenue, the corporation can, through its assessment of the individual's financial needs, make arrangements for repayment of legal services. But our experience was that the application fee deterred people from applying. In fact, in some cases it was used, perhaps inadvertently, by staff at legal aid to deter people from applying. We can't see an application fee providing any positive assistance in terms of access to legal services. It simply is a barrier that will lead to denial of services, and we would urge very strongly that that section be taken out of the act.

**The Chair:** Thank you very much for your presentation. That affords us three minutes per caucus; we'll begin with the third party.

**Mr Kormos:** If this government or any other government were to defund legal aid services, which the act entitles them to do by virtue of there being no guaranteed funding or no minimum standards, what would that mean in the case of ALST? Other than it being shut down, what would that mean to the justice system in Toronto vis-

à-vis aboriginal peoples and/or other utilization of ALST by aboriginal peoples?

1440

**Mr Rudin:** First we should recognize that it's not simply a decision to cut legal aid that would have an impact. If the province ceased to make contributions to the court worker program, if the province ceased to fund the alternative justice funding, any of those things would result in those programs ending. Certainly our criminal and family services provide a service to the courts that has been recognized by judges, by crowns, in Toronto and across Ontario. There would simply be more people clogging up the courts, unrepresented, pleading guilty.

Aboriginal people are already overrepresented in Ontario jails. It's something that people may not be aware of, but aboriginal people make up 1.4% of the Ontario population and they make up 8.3% of admissions to provincial correctional facilities. The overrepresentation of aboriginal people in jails in Ontario is of the same degree that it is in western provinces. I will just speak in terms of that. Kimberly can talk about the impact on legal aid.

**Ms Murray:** If we were to be defunded in the clinic sense, I imagine we'd go back to where we were pre-ALST, where our community wasn't accessing legal aid, wasn't accessing the services provided by legal clinics. Again, the studies show that they didn't feel comfortable going to those clinics, didn't feel those clinics met their needs. So there would be a big gap for aboriginal people. There would be no legal services available to them on both the clinic and the criminal justice side.

**Mr Kormos:** You know why I'm asking that. By and large, the general opinion out there among the public is that they don't like to see their tax dollars pay to defend criminals. I'm not telling stories out of school. That of course ignores things like presumption of innocence. My fear is that governments that cater to that sort of right-wing perspective may see an opportunity there, in a somewhat populist way, to accommodate that sort of bias. So I'm wondering, what do we say to the taxpayers of this province?

**Ms Murray:** That it will cost them more money, because they will be incarcerated, and aboriginal people are already overrepresented in the institutions. If they don't have lawyers, as they do now, they are more likely to plead guilty, so we'll have overrepresentation in the system. It has been proven to cost more money to jail someone than to not jail them.

**Mr Kormos:** I'm inclined to agree with that.

**The Chair:** We now move to the government members.

**Mr Martiniuk:** Thank you very much for your presentation. Is this particular clinic unique in Ontario?

**Mr Rudin:** Yes.

**Mr Martiniuk:** Do you service persons from outside of Toronto, therefore, in certain cases? You're not telling anything out of school. If a person from outside of Toronto were to phone, would you turn him away?



**Ms Murray:** Depending on the issue. Our mandate is the city of Toronto area. We can ask our board to exempt certain people, and we do that on a number of occasions. When it's an important legal issue, a law reform issue, we will do that. That's just the clinic side.

Jonathan, what does your side do?

**Mr Rudin:** We also have requests for our services from outside of Toronto. Our alternative justice program — we'll go to Brampton and Oshawa. Certainly it's one of the reasons we think the idea of an aboriginal legal services organization makes sense. What's striking to us is the number of people who call us from outside of Toronto. It's always interesting that they even know we exist. If that service was available to them in a more local area, it would certainly make much more sense for them, because they could get more than simply telephone advice.

**Ms Murray:** Right. That's what we do now. We try and give as much advice over the phone or hook them up with their legal clinic. Say they're calling from a northern community; the problem is that with the northern clinics, there are many areas of the law they won't practise. In particular, they refuse to take any action against a band council, and a number of the community members living off reserve have issues with their band council. They have nowhere to go for assistance on that, so often we'll bend the rules for those cases.

**Mr Martiniuk:** It might be a little off topic, but both my fellow commissioner and I travelled to Manitoba to take a look at the citizenship courts, of which they have 70, and I think over 10 are native exclusively. They were very effective there. I assume you feel your system is effective here?

**Mr Rudin:** Yes.

**Ms Murray:** Actually, in Winnipeg they just created Aboriginal Legal Services of Winnipeg, and they used us as a model. I think we had people in from Saskatchewan, is it? People come in to use us as a model.

**Mr Martiniuk:** This is a tricky question, if I may; I pre-warn you. With a community courts system, whether exclusively native or otherwise, I feel that one of the elements of appearing there is the element of what I call good shame rather than bad shame. Does that form an element in your diversion program?

**Mr Rudin:** The idea behind our diversion program is to allow the offender to take responsibility for what they do, to make sure they do that, and also then to take the steps necessary to make the change in their life to lead to their moving to a more positive lifestyle.

What's important to recognize about the people we work with, which may not be similar in other places, is that over 40% of the people we see in our program have been adopted or in care, and 60% to 70% have no connection with the aboriginal community whatsoever.

Toronto has over 60,000 aboriginal people. In our diversion program, we work primarily with people who have been estranged from the aboriginal community, often not through their own volition, and who are trying to find a way back. Unless they can find a way back, they won't find their way out of that jail-street cycle. They know who

they are in a negative sense, because they've been told that by their teachers, often, unfortunately, by their foster parents or their adoptive parents. They know that in many people's eyes they are nothing. They are an Indian, and they have no positive sense of what that means.

We've had very moving and difficult hearings where people have said to the members of our community council, "I've never been in a room where there have been three sober Indians before." It's not that that's a remarkable thing; it's just that for them that's not a reality that's ever been shown to them.

What's particularly important about our program, we think, is that people have very positive role models, people living in Toronto, some of them with good jobs, some of them unemployed, but all of whom are living a good life in Toronto, a meaningful and productive life, one that's integrated between the aboriginal community and the non-aboriginal community.

**The Chair:** We now move to the official opposition.

**Ms Castrilli:** Your institution, your clinic, the services you offer here in Toronto are obviously quite successful. What we're engaged in here now is trying to devise a new form of legal aid, I hope, a reform of legal aid that will meet the needs of the entire province. With that in mind, I wonder if I could ask you some questions about how we use your experience to provide an effective service for aboriginal people throughout Ontario.

Let me tell you that yesterday in Thunder Bay we were given a presentation by two very thoughtful women who were part of the Native Women's Association of Ontario, very courageous women who came forward and spoke up about what alternative justice means for them and how they as women have really been victimized within the Indian community. They recounted an example of one chief, for instance, who had been found guilty of sexual assault and was permitted to live out his sentence in relative comfort to ponder his ways, but there was no justice provided for the women involved.

I hear what you're saying about alternative justice. I'm wondering how you reconcile those two realities and if there is any way that you can give us any advice.

**Mr Rudin:** Certainly in Toronto the way we're able to deal with this is that we work with the entire community. On our diversion program, for example, we have people who work with native child and family services, the native women's association. So we consult widely. I think one of the strengths of the aboriginal legal service organization model is that it can be located, for example, not on a reserve. The idea would be that it could be located in an urban area.

As Kimberly mentioned, sometimes there are real issues between band members and band governments, and there is no way for those to be resolved. Many legal clinics, if they go on to reserves, will not challenge the band government, because otherwise they won't be able to come back. It's important that people have an outlet where the organization they talk to understands their issues and their needs. I think the idea of an aboriginal legal services organization is that it will be able to do that. It will be



able to call upon the resources not of a small community necessarily, but of the surrounding community and the urban community. I don't think the problems that these women spoke to you about are as likely to have occurred in Thunder Bay, where I know, for example, the alternative justice program is run by a woman, the friendship centre there is run by a woman. They are not as likely to occur in that context.

1450

By setting up legal services organizations which would have the opportunity to combine criminal law, family law, clinic work, court workers and alternative justice under one roof, you'd be able to address those issues in a much more meaningful way.

**Ms Castrilli:** Would you think that requires substantially more funding than is given now?

**Mr Rudin:** Right now, for example, in Thunder Bay there is already funding for court workers, there's already funding for an alternative justice program. It would be a question of integrating them. But yes, at some point it may be more funding because, as Kim said, aboriginal people aren't accessing in many cases the legal services they are entitled to.

**The Chair:** Thank you very much for coming forward today. We very much appreciate your taking the time to present to us.

#### COUNCIL OF ELIZABETH FRY SOCIETIES OF ONTARIO

**The Chair:** We will call upon our next presenters. Could the representatives of the Council of Elizabeth Fry Societies of Ontario come forward. If you could identify yourself for Hansard, we would appreciate it. Just to be sure you know, there are 20 minutes in total allocated time. At the conclusion of any presentation, the time is divided equally between the three caucuses for questions and answers. Thank you for coming, and you may begin.

**Ms Elaine Bright:** I'm Elaine Bright. I'm the executive director of the Elizabeth Fry Society of Hamilton, Ontario, but I'm here on behalf of the Council of Elizabeth Fry Societies of Ontario. Written submissions were distributed, and there's a short covering letter with them. It talks a bit about our organization and gives a summary.

The Council of Elizabeth Fry Societies of Ontario is the regional voice for women in conflict with the law in Ontario. We have nine member agencies in Ontario based in Kingston, Ottawa, Peterborough, Peel and Halton, Simcoe county, Sudbury, Toronto, Kitchener-Waterloo and Hamilton. Some member societies also work with men in conflict with the law. The member agencies work for and with women in conflict with the law, as Elizabeth Fry societies across Canada do.

In Hamilton, for example, some of the programs we have are counselling for abused women who are in conflict with the law, including a group program in the detention centre. We also have a court worker who meets with women, usually on their first appearance at court, who don't know where to find legal aid or where to find a

lawyer. We have staff who visit the detention centre and the prisons in the area, both the provincial and federal prisons, to meet with women planning to be released to the Hamilton area and assist them with their release planning. Usually this involves, certainly for federal women, helping the women prepare for a parole hearing before the National Parole Board.

The Council of Elizabeth Fry Societies supports the purpose of the act as stated in section 1. We have one issue we'd like the committee to review, and that is the issue that there have been inconsistencies in the past with respect to the provision of legal aid certificates for people in custody, inconsistencies across Ontario.

For example, there are federal penitentiaries in Kitchener-Waterloo, the Gravenhurst-Bracebridge area, Warkworth, Kingston and Millhaven. Each of these is in a different area under the current divisions of legal aid areas, and the availability of legal aid for correctional matters such as hearings before the National Parole Board has varied from place to place. In one area, a certificate would be granted for such hearings; in another, it would be granted if a letter of opinion was submitted in support; and in another area it was never granted for a parole-granting hearing, for an initial parole hearing. Similar inconsistencies exist with respect to the granting of certificates for other correctional law matters. You can imagine that it's hard for people in prison to understand that if they were in a different prison a few miles away they could get legal aid to retain counsel for a parole hearing, but not in their current situation.

It's a very important issue. Correctional law matters are very important issues, as you can imagine, for people who are in custody. For some people, Correctional Services Canada and the National Parole Board have effective control over the rest of their lives. For example, a person serving a life sentence for offences other than murder can obtain release from the National Parole Board after serving a minimum of four years of a sentence and spend the rest of her life out of custody, but the same person if denied release by the National Parole Board could serve the remainder of her life in custody, perhaps. Granted, she would have regular hearings, but the authority for release would rest with the National Parole Board. Their custody could last many, many more years.

Liberty is clearly an important issue, and it's now covered by the charter as well as the common law. The risk of incarceration has been used in the past as a test to help determine whether a legal aid certificate should issue, particularly for a person charged with a minor criminal offence. So while the current scheme reflects some awareness of the significance of the liberty issue, there has been confusion in terms of correctional law.

If Bill 68 passes, clearly it will be up to the corporation to decide what, if any, correctional law matters will be covered. Our concern is that that decision be made consistently and with the advice of lawyers who are familiar with correctional and criminal matters.

It's noteworthy also that history suggests that counsel is required in order to hold the decision-makers accountable



in such situations. One could argue that decision-makers would act fairly without the necessity of people in prison retaining counsel, but that hasn't been the case in the past. There have been some notable problems.

Particularly, for example, David Cole, who is now His Honour, and Allen Manson, in their book *Release From Imprisonment*, talk about the development of correctional law and about the situation that existed before the National Parole Board was held accountable for its actions through judicial review. They quote from a case called *Mitchell*, where Mitchell had his parole, was arrested shortly before the expiry of his sentence. He'd been on parole and then his parole was revoked and he had to serve another two years in custody. He wasn't given any credit for the time on parole.

Then-Chief Justice Laskin said that the facts "tend to shock from their mere narration." This is a passage that's become famous for its description of the parole board before the era of judicial review. He says: "The plain fact is that the board claims a tyrannical authority that I believe is without precedent among administrative agencies empowered to deal with a person's liberty. It claims an unfettered power to deal with an inmate as if he were a mere puppet on a string. What standards the statute indicates are, on the board's contentions, for it to apply according to its appreciation and without accountability to the courts."

Our concern is that when people don't have access to legal aid in order to retain counsel for some of these matters, then again there is no accountability. Our position is that prisoners need counsel just to ensure that their rights are observed.

Similarly, Madam Justice Louise Arbour, in her report on the inquiry at the Prison for Women, talked about problems she saw in the correctional service in observing the rule of law. She stated: "Reliance on the rule of law for the governance of citizens' interactions with each other and with the state has a particular connotation in the general criminal law context. Not only does it reflect ideals of liberty, equality and fairness, but it expresses the fear of arbitrariness in the imposition of punishment."

Later on, she says: "The breakdown of the rule of law in corrections has been denounced in the past, often in the most forceful terms. In 1977, [the MacGuigan report] stated that 'There is a great deal of irony in the fact that imprisonment...the ultimate product of our system of criminal justice itself epitomizes injustice.'"

Madam Justice Arbour stated, "The rule of law is absent, although rules are everywhere."

I would further submit to the committee the requirement that people making these decisions with respect to legal aid for correctional matters have some expertise in criminal law and an understanding of the criminal justice system. Madam Justice Arbour addressed that to some extent also in her report.

We're suggesting one simple amendment, and that is that the definition of "criminal law" in section 2 of the proposed act be amended by adding simply the words "correctional law." That is to say, "criminal law"

includes legal matters respecting provincial offences, correctional law and young offenders."

**1500**

This amendment would ensure that the criminal law advisory committee which would be established under section 7 made recommendations to the corporation with respect to coverage for correctional matters. Criminal lawyers are those who best understand correctional law issues. Also, the amendment would ensure that the correctional law matters were dealt with at the board level by the board rather than possibly being decided by area directors and area committees, which could lead to the same inconsistencies that exist in the current system. We believe the correctional law matters deal with very important issues and again urge the committee to consider an amendment that would ensure that these matters are addressed at the board level.

**The Chair:** Thank you very much for your presentation. That affords us just under three minutes per caucus. We begin with the government members.

**Mr Bob Wood:** I wonder if you'd put yourself in the position of a sentenced inmate and give me a priority list of what legal services you think would be most important to you; prioritize them, in other words.

**Ms Bright:** A hearing before the National Parole Board would be number one.

**Mr Bob Wood:** Would you have others on the list?

**Ms Bright:** Yes. Hearings before a disciplinary tribunal for disciplinary charges, because those can have a major impact on whether a person gets support for release on parole from the institution. Other matters are advice on a wide range of matters. People in prison often want legal advice on things to do with health care, things to do with sentence calculations, a whole variety of matters.

**Mr Bob Wood:** You spoke about the inconsistency throughout the province of legal aid being available for parole hearings. If we were to introduce consistency to that or if the corporation were to do that, what sort of guidelines would you recommend?

**Ms Bright:** In terms of consistency, yes, I agree —

**Mr Bob Wood:** We understand your point about lack of consistency. I'm saying let's assume the new corporation were to say, "OK, we're going to have consistency across the province." Can you give us a flavour of what kind of guidelines you think should apply to the granting or not granting of legal aid for a parole hearing?

**Ms Bright:** I think generally there should be a presumption that if a person is serving a life sentence, for example, and their only way out of prison is by virtue of release by the National Parole Board, they should definitely be given legal aid for those hearings.

For other people serving sentences, I would think that legal aid would want to know that the hearing had a reasonable chance of success, that they were moving ahead; that a hearing was going to take place, it wasn't going to be adjourned, that sort of thing. There are some people who are eligible very early in their sentence but there's no likelihood that they are going to be released,

there's no realistic chance that they are going to be released early. So I think it's reasonable to ask for an opinion that there will be a hearing that will go ahead and that there's some chance of release.

**Mr Bob Wood:** That opinion being from whom, counsel? You would pay money to have a lawyer take a look at it and issue an opinion letter. Is that what you have in mind?

**Ms Bright:** Sometimes now in some prisons there's duty counsel who goes in and handles a lot of minor matters in terms of advice and various things and who can also make recommendations with respect to whether a certificate should issue for parole hearings.

**Mr Bob Wood:** Are there other criteria that you would recommend to the corporation if they chose to standardize the criteria across the province?

**Ms Bright:** The main criteria that I would emphasize would be to look at the significance of the liberty interest at stake and whether there was a reasonable chance of success or some chance of success at the hearing.

**The Chair:** We'll move to the official opposition.

**Ms Castrilli:** Thank you, Ms Bright. You've presented a very well researched position and you make a cogent argument, supported by eminent authorities. I'm persuaded by what you say.

My questions really deal with the clinic that you have. I wasn't aware that Elizabeth Fry had a clinic. I assumed that you worked with the private bar.

**Ms Bright:** We don't.

**Ms Castrilli:** But you have a correctional law project? Is that part of Elizabeth Fry?

**Ms Bright:** No, that's not Elizabeth Fry. That's a clinic funded by the Ontario legal aid plan.

**Ms Castrilli:** Thank you very much. I appreciate that.

**The Chair:** We move to the third party.

**Mr Kormos:** Again, you know there are no guarantees of overall funding in this legislation.

**Ms Bright:** I understand that.

**Mr Kormos:** The proposal is that the funding be by virtue of general revenues, monies allocated by any government of the day to legal aid.

**Ms Bright:** I understand that.

**Mr Kormos:** And that governments are going to insist that there aren't adequate funds to cover all of the services that are contemplated and that yours may well be at the bottom of the list.

**Ms Bright:** Some people might see it as being at the bottom of the list. I certainly would argue that it should be —

**Mr Kormos:** I know that, but you know what the general public would have to say, right?

**Ms Bright:** Yes.

**Mr Kormos:** Let's be candid here.

I don't know what your income bracket is, but you've received a tax cut of 30% of your provincial income taxes. Would you be prepared to have that rolled back if it meant adequate funding for legal aid programs across the province?

**Ms Bright:** Absolutely.

**Mr Kormos:** Do you think investment in things like adequate levels of legal aid is a good investment with a calculable return?

**Ms Bright:** Absolutely.

**Mr Kormos:** Do you want to expand on that a little bit? We've got a little bit of time.

**Ms Bright:** I think it's an essential investment. There's a lot at stake in terms of correctional law and certainly there's a lot of benefit to the public if people are released safely from prison. It's much less costly to keep people in the community. There's been a lot of research that suggests that in Canada we put more people in custody than we need to, in terms of the people who are actually a danger to the public. There are significant savings to be realized by letting people out, by having lawyers help people obtain fair hearings before the National Parole Board with a reasonable chance of release. There are a lot of benefits to the public.

**The Chair:** Thank you very much for coming forward today with your presentation. We very much appreciate that.

**Ms Castrilli:** Chair, as the next person comes up, I wonder if I might put a question to our researcher.

A previous presenter from the County and District Law Presidents' Association indicated that the Attorney General had said there were certificates that were issued to paralegals. I would be interested in having information as to whether that's correct and how many certificates we have in fact issued to non-lawyers.

**Mr Kormos:** The Attorney General may not be telling the truth.

**The Chair:** Mr Kormos, sometimes we tread a thin line. It's my job to watch that line.

## ONTARIO LEGAL AID PLAN AREA DIRECTORS' ASSOCIATION

**The Chair:** We would call upon our next presenters, the Ontario Legal Aid Plan Area Directors' Association. If you could identify yourselves for Hansard, we would appreciate that.

**Ms Ramona Wildman:** My name is Ramona Wildman. I'm president of the area directors' association. Seated on my right is Leslie Ault, who is vice-president, and on my left is Robert Buchanan, who is the treasurer. I am a part-time area director with the plan. I'm from Barrie, and my area is Simcoe county. Leslie is from Cornwall, and Rob is the area director in Toronto.

We have prepared some speakers' notes for the committee. We apologize, as they've been put together fairly quickly, so if you see any huge gaps in them, it's due to our limits of word processing skills and not a lack of interest.

There are a number of items we'd like to talk to you about. The first is the preservation of the local office structure. As I'm sure you're aware, there are 54 areas in the province of Ontario, and it's our understanding that when the McCamus review committee went out across the province, there was overwhelming support for the contin-



uation of the local office structure. We recognize, as the area directors, that we can well be perceived to have a vested interest in continuing this structure. We think it's best for the province, but we would suggest to you that if there's any question about that, perhaps it would be appropriate to go back to your constituencies and find out what the people in your areas feel about that. Our understanding is that the response to the question, "Should we go to a centralized or a regionalized structure?" was so overwhelmingly negative that the question shouldn't be an issue.

1510

Unfortunately, in the legislation at section 15 there is provision for areas to be merged. It may well be appropriate for areas to be merged if there are cost savings or whatever reason, but we think there should probably be a recognition in principle of the importance of preserving a structure that will be responsive to local needs. It's our hope that there will be some consideration given to adopting that principle and incorporating it into the act. If necessary, you can certainly set out criteria which would be used, such as those suggested by the review committee, for merging areas. But if it's important to preserve that local structure and not move to, for example, a structure similar to the Family Responsibility Office —

**Mr Kormos:** I would hope not.

**Ms Wildman:** So would we.

If that hope is shared by everyone, it's important that you have that in the legislation. Otherwise, it could well get lost five or 10 years from now and there's a danger of moving to something that will not be as responsive as the current structure. We're hoping you'll give some consideration to that point.

The second point we'd like to talk about is stability of funding. I sense that I may get some questions on that particular point and our association's views about stability of funding. Obviously, we feel that in order for the legal aid plan to continue, for there to be credibility of the plan, for lawyers and other service-providers and also the public to think they can support and believe in this plan, they have to know that the money is going to be there.

The last few years were very difficult: people not knowing if they were in or they were out, how long the budget would continue, whether certificates would be paid for. It was almost impossible for us in the local offices to continue to provide adequate service. So we feel very strongly that there has to be some guarantee of funding for a certain minimum period of time. We're suggesting that it might be appropriate to have a three-year rolling budget so the budget is set for three years, and then annually we'd set a new budget and that would be for the third year down the road, so the people who are dealing with the plan will know where they stand and know where we're going to be in the future. If we're setting it every year for that year, it's too unstable for people to have confidence in dealing with the plan.

We also felt it would be appropriate to include some comment about independence from government. We don't really feel that the area director's association should be

fighting this battle, but certainly in the McCamus review there was a very strong statement that the legal aid plan had to be separate from government. You can't have one agency funding, for example, in a criminal case the prosecution and the defence — children's aid issues. There has to be some separation. We were concerned, in reading the bill, about the suggestion that perhaps it would be the Lieutenant Governor in Council rather than the corporation that would be establishing policies as to what would and wouldn't be covered by the plan. The same concern may well exist about the membership on the board, and we imagine there are others who will raise that issue before you, but we wanted to add our voice that it's certainly a concern.

We have a number of housekeeping matters that we've set out in our formal presentation. One that's most important that we stress for you is the role of the area director, both at the area committee and in operating as area director. One section of the act provides that the area director will not provide any legal services. Most of the area directors are part-time area directors. It's a condition of our contract that we have active law practices, and that's considered a strength of having a local area director. If there was an absolute ban on our providing legal services, that would make it difficult for us to continue to act. It's our understanding that probably that was meant to say "legal aid services," and we have no issue with that. It's not appropriate for an area director to be acting for a legal aid recipient in any way. We'd be comfortable if that amendment were made, but the absolute ban on providing legal services is too broad.

With respect to the area director at the area committee, there's a new structure proposed in this bill which would provide that the area director would continue to act as a secretary for the area committee but could not participate in any of the proceedings. We found that difficult to understand. I don't know how much all of you know about the area committees, but they are volunteers from the community. They can't possibly keep up with all the financial requirements, the policies of legal aid. All our offices are filled with memos coming at us fast and furious, and we have trouble keeping on top of them. Without us serving in an advisory capacity to the area committees, it would be impossible for them to function. We have no difficulty, of course, with saying that we should not participate in any voting, particularly with respect to an appeal of a decision by one of us, but I think you'd find that the area committees do require us to serve in that advisory capacity. So there has to be some provision for that.

There's also no right of appeal from the area committee's decision and that's a concern. The act provides that the area committees will act in accordance with the policies established by the corporation. If there's no right of appeal, there's no really effective mechanism to ensure that they are properly and consistently applying the policies that the corporation is setting out for delivery of legal aid services. Most of us are quite comfortable with our area committees. There are relatively few appeals of



area committee decisions by area directors, but there have been times, particularly in the last few years, where we would get a comment about: "We don't care what the policy is. We think it's fair that this person get legal aid." If area committees were given that unfettered discretion to give a certificate to whomever they felt would be appropriate, it would lead to inconsistent service across the province and might well have some serious cost ramifications that we might not be able to control.

I'm conscious of the time. The other matters that we have set out deal with quality assurance and housekeeping issues. I'm not sure that we have to speak to them.

**Ms Leslie Ault:** I just wanted to mention one thing. It's a line that Ramona had in the presentation, that we're on the front line. We're the actual people who are running the offices that provide the service. When you people talk about regulations and whatnot, when they're discussed, we would really like the opportunity to have some input. I think it's valuable; I think it's important at that stage. If we could put our two cents' worth in then, it would be really very much appreciated.

**The Chair:** That allows us approximately three minutes per caucus. We'll begin with the official opposition.

**Ms Castrilli:** Thank you for not taking up the entire time, because I have a couple of questions that I want to put to you. The first deals with something you said, that you'd like to see something in the act that says mergers won't be automatic, that there are going to be some criteria, and the criteria should be cost savings and quality of service. I suggest to you that those two things are a problem in terms of criteria because cost savings, particularly given what we've seen in the last three and a half years, would always win out over quality of service. I just wonder what guidance you can give us. If those are the criteria you're adopting, I don't think it gives you any protection at all with respect to mergers.

**Ms Wildman:** What we would like to see is an endorsement of the principle that legal aid can best be provided through the local office structure and has to have a structure in place that is responsive to the local needs, and there will be no change to the existing structure unless (a) there will be a cost saving, but more important, (b) it can be demonstrated that there will be no reduction in the quality of service, that there's some sort of mechanism to ensure that that local input, that local interaction is in place, because it's the strength of the plan.

In my area — we're all lawyers, and unfortunately there's a lot of lawyer-bashing that can go on, but I am so impressed by our local bar. They don't have to work for \$60 an hour. They have other work they can do and they're doing it because they believe in legal aid; they believe it's important. I don't think you would get that level of commitment if you didn't have the ongoing interaction, the ongoing availability of a local person. They don't need the hassle.

**Ms Castrilli:** What I hear you saying is a little different from what we were told before: that under no circumstances would quality of service be affected; that

yes, you can look at cost saving but it must never jeopardize the quality of service. Is that fair?

**Ms Wildman:** Yes, and I'm sorry I didn't make that clear.

**Ms Castrilli:** The other point I'd like to ask you about is the issue of paralegals. We've had a fair bit of talk today about paralegals and we've had everything from, "They shouldn't be allowed deal with people unless they're supervised by lawyers," to others who have said, "They should simply be removed from the act." You haven't been given an opportunity to discuss that point. I just wondered if you might do that now.

**Ms Ault:** That was actually going to be my topic from "What is quality assurance?" that we skipped over.

Our concern as area directors mainly is that paralegals have to be under the supervision of lawyers. The act says that. It doesn't set out any standards for what kind of supervision, and what I put in here was that it could be so lax that it's tantamount to no supervision at all. As area directors we're sure not saying that they can't be included or shouldn't be included; it's just that they should be monitored really well to make sure everything goes well.

**Ms Castrilli:** It's been pointed out to us that there may be an inconsistency, that you could read this act as to allow certificates to be given to service-providers, which include paralegals, which is a little different from what you're telling us.

**The Chair:** We now move to the third party.

**Mr Kormos:** On the issue of merging of offices, I come from down in Niagara, and right off the bat I know that some genius — I use that word sarcastically — in this government's bureaucracy is going to have the brilliant idea of merging Niagara north and Niagara south — Lincoln county and Welland county. But they don't understand that we don't have public transit between St Catharines-Welland-Niagara Falls, and if you're applying for legal aid, you're poor, the implication is that you're poor, never mind what it would mean up in the north where you've already got, I'm sure, unwieldy districts.

You talk about section 22 — interesting. Having read that, I thought that maybe it was a misquote, that maybe they meant, "shall not render legal aid services" — I'm speaking of subsection (6) — because "legal aid services" is defined in the definitions section. That would appear to contradict the requirement in subsection (3), except that even the requirement in subsection (3) is weird. All this proves is that the Attorney General doesn't read this stuff before he announces it, because it says, "must be a member of the law society," but when you see what a member of the law society is, by definition that includes a student member or an honorary member. Why don't they just say, "shall be a lawyer entitled to practise law in the province of Ontario"? That would exclude student members and honorary members. Again, either it's very sloppy or ill-thought-out, ill-conceived.

Let me put this to you: Why should subsection (3) be passed, in your view? I've got to tell you I've had mixed feelings about why the area director must necessarily be a lawyer. Historically, that's been the case; they've been



patronage positions. I'm not talking about the recent past, but in years gone by they have been. Do you think it's imperative that they be lawyers?

**Ms Wildman:** I would find it very difficult to do this job without my legal training. I'm not going to say that lawyers are the only people in the world who would be able to understand the Legal Aid Act, understand the court, but it would be so difficult to find the background to be able to do this position that I think the danger of leaving it wide open is a real concern. If we leave it that you have to at a minimum have a law degree to be appointed as an area director, that's a good thing.

**Mr Kormos:** The reason I'm asking that is because I know, let's say, experienced staff people in legal aid offices who in my view, and I could be dead wrong, know far more or as much as their — especially when you're dealing with a part-time director, OK? I'm not diminishing that role. They run the damn thing at the end of the day and the director relies upon them — "Do I sign here?" — especially when you've got the corporation, which presumably will have legal staff. I appreciate what you're saying and I'm just saying this in defence of some staff members in legal aid plans whom I know who I think would be fine directors but would be barred by virtue of subsection (3).

**Mr Robert Buchanan:** We certainly agree with the excellence on staff, but we do find there are still, even with the most capable staff, legal issues which have to be passed on. They certainly do a tremendous job of vetting and dealing with the major problems, but we still find there are decisions where a legal opinion is required.

**Ms Wildman:** A lot of what we do is dealing with the bar, dealing with the courts. We get calls from judges, and I think being a member of the bar really helps for us to have credibility in dealing with them.

**The Chair:** We now move to the government members.

**Mr Martiniuk:** Thank you very much for your presentation. I'm sorry I wasn't here for it throughout but I will read your brief in full. I just want you to be aware that our government is giving stability in funding in that a memorandum of agreement — this was a procedure I guess brought in by Mr Kormos's government, which felt that stability should be there for funding and they signed a five-year contract.

**Mr Kormos:** Well, Marion Boyd never lied when she was Attorney General, Gerry.

**Mr Martiniuk:** Following the lead of Mr Kormos and his government, we are presenting a memorandum of agreement which will be signed, guaranteeing funding for a three-year period. I thank you for your leadership there, Mr Kormos. It's most valuable.

**Mr Kormos:** Well, he lied about the family support plan.

**Mr Martiniuk:** As far as paralegals are concerned, we've heard a number of opinions that there is ambiguity in the act. I can assure you that it was not the intent of the drafters to permit paralegals to obtain certificates under the legal aid plan. We are considering the possible

ambiguities in there — I thank you for your presentation — and hopefully we'll meet any concerns you have with that.

I'd like to just ask you a question, however, regarding the priorities. Can you tell me how the present plan is working? Are you satisfied that there is sufficient authority at the local level to set the priorities of the geographical area?

**Ms Ault:** Could I just follow up on that point? Listening to people speaking ahead of us, one of the concerns was that there wasn't enough consistency across the province, that an applicant would go to one office and be denied, go to the next office and be granted the application. We think that's wrong. We want consistency. There should be consistency of policy. Everyone should be entitled to the same sorts of things.

When we talk about the local nature, we talk about dealing with other issues as well, like how we deal with the bar, how we deal with many other issues. It's not just yes or no to certificates. We're not against the consistency across the province as far as the policy is concerned.

**Mr Martiniuk:** OK. Would you suggest that possibly the new corporation should be consulting and setting down general guidelines within which the local offices should work?

**Ms Ault:** We're doing that. Since this whole thing came under review a few years ago and the whole thing was in the papers and whatnot, head office has gone out of its way to try to make sure things are more consistent. We have had far more meetings with area directors, laying down the law as to what's what. But as Ramona mentioned, that's changing. It changes very quickly, so it's difficult to keep on top of all that.

**The Chair:** Thank you very much for coming forward with your presentation today.

1530

#### CANADIAN COUNCIL FOR REFUGEES COALITION FOR JUST IMMIGRATION AND REFUGEE POLICY

**The Chair:** We call upon our next presenters, the Canadian Council for Refugees. If you could identify yourselves for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Mr Francisco Ricco-Martinez:** My name is Francisco Ricco-Martinez. I am the president of the Canadian Council for Refugees. That is a national umbrella organization. We have 140 members, more or less, in all the provinces of Canada and we represent them publicly in terms of advocacy and policy issues. With me is Avvy Go, who's representing the Coalition for Just Immigration and Refugee Policy in Ontario.

We are going to address the issue of immigrants and refugees in the new act. Basically, one of the first comments that I have is, did you see the list of participants in these public hearings? There's a lack of participation of the newcomers and new refugee communities in Ontario,

even though we have a lot of representation and a lot of participation of refugee and immigrant communities in Toronto. Maybe 52% of the people living in this city weren't born here in Canada or in Ontario. So we don't have that participation, and we believe that is because historically the process of public hearings is not friendly to new immigrants and refugees. That is not just because of the process itself; it is because of some natural conditions of the immigrants and refugees. Language is one of those, lack of understanding or familiarity with the system is one of those, and people don't have access.

The publicity about these hearings has been very bad in terms of ethnospecific communities. People don't know that they are discussing their future. I just want to mention that the underrepresentation of ethnospecific communities or organizations working more related with immigrant and refugee issues is clearly a sign of lack of understanding of what the issue is all about for the refugee community and immigrant communities that are going to be affected with the new law.

We are here to talk about our great concern in terms of the fact that legal aid services for immigration and refugee matters are not included in the act, because they are not defined as a basic area of law that is going to be served by legal aid. Subsection 65(6) sets only two years' guarantee of funding for immigration and refugee law, starting this April, so for the year 2001, refugee and immigration law is not going to be one of the basic areas of law that will be served by the act.

The other limitation is that even though the act provides the possibility of the corporation to provide services in other areas of law that are not mentioned in the law, clause 13(3)(e) gives the provincial government the power to enact regulations to forbid the board of the corporation from providing services in any area that is not listed in the law. That's our biggest concern. The very visible and colourful minorities of Ontario are invisible in the new legal aid act. It's something that we have to tell you.

The McCamus report that everybody mentioned is asking and recommending that legal services be kept by immigrants and refugees — and not just kept. They are asking for it to extend the areas of law that they are covering. They are talking about not just immigration and refugee law in terms of the IRB, or the Immigration and Refugee Board; they are talking about other immigration procedures, including detainees and also post-determination review claims.

Even though the government took a lot of recommendations from that report, we don't know why they didn't pay attention to this specific one that is so crucial for immigrants and refugees. The impact of no legal aid for immigrants and refugees in Ontario will be tremendous. Some 50% of the immigrants and something like 45% of the refugee claimants come to Ontario. We are talking about thousands and thousands of people who depend on legal aid in order to somehow have a fair process before the Immigration and Refugee Board and before the Department of Citizenship and Immigration.

Legal aid permits or allows the immigrants to have an interpreter, for instance. If we cut legal aid, the people are not going to have access to interpretation or translation of documents. They are not going to have access to any kind of legal advice, especially because now, also under the legal clinic system, you are leaving out, or it's not expressly there, the possibility of legal clinics to expand their work with immigrants and refugees if legal aid is cut. Also, the legal system already is overloaded with immigrants and refugees that it is serving right now, so to just send the immigrants and refugees to legal clinics is not the solution to the problem, because it's already overloaded. That was said by the Association of Community Legal Clinics of Ontario.

We have implications already. The federal government is already cutting a lot in terms of services for new immigrants, settlement services. The Ontario government has cut a lot as well for settlement services for new immigrants and new refugees. Plus the federal government is imposing fees. The head tax fee is \$975, the processing fee is \$500, so each adult has to pay \$1,475 to become a landed immigrant in Canada. And now we are adding to pay a lawyer and the fees, plus other expenses.

The refugee and immigrant community has also suffered another cut. We're making it very hard for them to survive; the 25% cut from welfare, for instance. The reductions in different systems of health and other social services have been affecting the immigrant and refugee communities, and now we have the problem that legal aid is not going to be here for them after two years.

The implications are basically tremendous. Families are going to be hit, without reunification for a long, long time. There is the possibility of a person losing a case even though he's a genuine refugee before the Immigration and Refugee Board, and that's because our immigration and refugee system is so complex. It's considered one of the more complex ones on earth. So they need necessarily, in my opinion, legal representation in order to succeed or to have a possibility to succeed before the Immigration and Refugee Board.

We have a process in terms of the immigration department that is so complex and so adversarial that we need a lawyer to represent the best interests of the person who is applying for that process. We are talking about deportations; we are talking about detentions. If you leave the person in detention for a long period of time, the implication for spending money by the government will be greater than spending on a legal aid certificate that is going to facilitate the whole situation.

The last thing I want to say in terms of making clear the magnitude of the effects of the problem is that we believe there are different areas of rights that are going to be affected under the Canadian Charter of Rights and Freedoms, and we are ready to proceed to investigate and to research about what are going to be the implications under the charter and to put information forward and document it.

We are also concerned that the international obligations of Canada in terms of refugees and immigrants are going



to be violated in terms of discrimination on the basis of the legal status of a person in a country. That's something that we have discussed a lot. We believe that Canada has a wonderful history, starting not too long ago but changing dramatically to the positive, about welcoming immigrants and refugees, and that will be a totally negative impact in terms of the impression of Canada in different ways and in the way of treating immigrants and refugees all the way.

So now it's Avvy Go, talking about other concerns and also about some recommendations.

1540

**Ms Avvy Go:** Again, my name is Avvy Go. I'm the clinic director of the Metro Toronto Chinese and South-east Asian Legal Clinic, which is a member of the Coalition for Just Immigration and Refugee Policy.

Francisco's point is focusing on legal aid for immigrants and refugees. I would like to highlight some of our other concerns, some of which also have an impact on immigrants and refugees and others which have a less direct impact.

To start with, I want to echo some of the things that have been said before, one of the issues being the application fee. I think it's counterintuitive that we impose a fee on people who only apply for legal aid when they cannot afford it to begin with. So there is a serious concern around the application fee, and my understanding is that even in the current system they decided at some point to take back the fee, partly because they have a surplus but also partly because they recognized the impact of having a fee on the number of applications that can come forward.

The other issue that we want to highlight is, in the act itself there are a number of provisions that deal with cost-efficiency as one of the main objectives of the legal aid plan. Of course, we have no quarrel with that; the legal aid system should be cost-efficient. But we don't see that this should be the only or even the primary objective of the legal aid plan. We have the opportunity of looking at the BC model, for instance, where they define the objectives of the BC plan to include a provision of services for people who cannot otherwise afford them. They also include as an objective education, information about the law for the public. The emphasis there is more about the needs in the community out there. We think that should be the primary objective of the legal aid system, not to ensure that we find the cheapest way to run it.

The other issue is around representation on the legal aid corporation. We are very pleased to see that this government actually included a provision that the members of the legal aid corporation should have knowledge about the disadvantaged communities, the special needs of low-income people. I think that's all very commendable; however, I don't think the government has gone far enough. Besides the knowledge aspect, there is also the equally important issue of representation. We need people who are from the disadvantaged communities to sit on the legal aid corporation because they are the ones who know what is the impact when cuts happen, when policies change. We think there should be a requirement that the legal aid corporation not only have knowledge but have actual

representation of people who are directly affected by legal aid. Given that Ontario is a very multicultural, ethnically and racially diverse community, one of the representation issues would be the cultural and racial diversity of representation.

The other important issue that we want to highlight is the whole issue of independence, and this is something that has been mentioned before. There are two aspects to it. In some ways I think that in a civilized society or a democratic society we often — it's not my phrase but somebody has said that we measure how civilized we are by looking at how we treat the most vulnerable among us. That would include people who need legal aid because they are poor, because they are prisoners, because they are charged with criminal offences, because they're immigrants or refugees who have no political rights. This is how we should view the purpose and the importance of keeping legal aid. That should be the starting point.

The other issue around independence is because, at least in a western democratic society, we measure how democratic we are by looking at the separation of power. It is important that we keep that in the context of legal aid because legal aid is part of the legal system and therefore it should not have intervention by any political side of the government. So for that reason I think it's important. For instance, the legal aid corporation should have a process that allows for an independent appointment process. It shouldn't just be up to the government to say, "I take this person or that person," without any input from the community, without any input particularly from the communities affected by it. So we would like to make a recommendation around those issues as well.

We have included a number of recommendations that are contained on the last page of our paper. For instance, we have asked the government to consider changing the objectives or at least to amend them to include, on top of this issue around cost-efficiency, the recognition to meet the needs of low-income individuals in Ontario or something to that effect. There should be an amendment to subsection 13(1) to make immigration and refugee law part of the core legal services and to remove any reference that the government can just come in and change regulation and impose conditions on the corporation, as it does in clause 13(3)(e).

We have also included that perhaps you should consider making it more clear in the definition of "clinic law" by specifically including immigration and refugee law, because that is very much a part of what we do right now.

Finally, there should be amendments to the selection criteria not only around the representation issue but also around the independence issue.

**The Vice-Chair:** Thank you. We're running fairly close on time. Approximately a minute per side, starting out with Mr Kormos.

**Mr Kormos:** We don't have enough time once again. Let me put this to you. You know that section 65 of the bill guarantees stable funding for two years for refugee law. However, section 13, as you indicate, doesn't include

refugee law as one of the areas of law covered by the scope of this new legal aid plan. The government would say that what they're doing is simply negotiating or setting up a two-year time frame to negotiate with the federal government. I say, horsefeathers. That's clearly a bogus argument, because if it were only about negotiating, they would have put in the two-year stable funding as they have but would have still included refugee law in the areas of law to be provided under the legal aid plan.

I find that a totally bogus sort of argument. I think they're exploiting a very racist sort of tendency out there in the community that's very anti-refugee. It's very much their constituency, and I find it frightening that the government would be playing that sort of xenophobic game.

I appreciate your presence here. We had people in Thunder Bay yesterday from the Catholic diocese who work with refugees. You raise an important point, and I think this government should respond with other than mere rhetoric.

**The Vice-Chair:** Thank you. The government side.

**Mr Martiniuk:** The application fee is authorized. We had hoped to give the new corporation as much flexibility as possible. This government does not necessarily advocate that. That's going to be a decision of this independent corporation. So it's empowerment, not something we're mandating that has to be done.

The guaranteed funding: I think it's very important to realize that our government thinks that immigration and refugee law is very important and that's the very reason we've put right in the act a guarantee for immigration and refugee matters, guaranteed funding for two years. We're the first government to do that. For instance, Mr Kormos's government signed a memorandum of agreement but they didn't guarantee immigration and refugee law. It could have been done away with under their government. We felt differently. We feel that —

**Mr Kormos:** It could have but it wasn't, and you are doing away with it.

**Mr Martiniuk:** Mr Chairman, I don't interrupt Mr Kormos. He uses these guerrilla tactics —

**Mr Kormos:** It's a bald-faced lie, Gerry.

**Mr Martiniuk:** It's most improper. He doesn't believe in democracy.

**Mr Kormos:** You're a bald-faced liar, Gerry.

**Mr Martiniuk:** He wants to have his say and then he refuses to listen. You can see how democracy is devalued by this member.

The point I'm making is simply that we thought it so important that for the first time this government, unlike any other government, including Mr Kormos's government, put it right in the legislation that there's two years of guaranteed funding for this matter. I happen to believe it is very important too. I thank you very much for your assistance here today.

**Ms Castrilli:** Avvy, it's nice to see you again. Thanks for coming. You raised some very important issues and a minute doesn't allow us to do very much with them.

I want to ask you some very specific questions to assist us. I don't believe, as has been said, that there's a real

commitment to refugee and immigration law, for reasons that you've mentioned and some others. In the structure of the corporation, in the board, the criterion is that they will appoint people to reflect various geographic portions of the province. Would you support also a demographic representation on that board?

**Ms Go:** Yes. I think regional representation is important because rural Ontario and northern Ontario have different issues from Toronto.

**Ms Castrilli:** Let me ask you my second question because the Chair is going to stop me. In other areas in this legislation, there is a provision for an advisory committee dealing with a particular area of the law. Would you support a refugee and immigration advisory committee?

**Ms Go:** Yes.

**The Vice-Chair:** Thanks for your presentation. We appreciate that.

1550

**Ms Castrilli:** Chair, I have a number of questions as the next presenter comes forward. First off, I'd like to know, the press release that was sent out, and we only advertise by press release — I would like the former presenters to perhaps follow what I'm saying — we had press releases sent out, and I want to know specifically if those press releases were sent to papers other than English and French and if they were translated.

**The Vice-Chair:** We'll ask for that.

**Ms Castrilli:** All right. I'd like to know that.

I'd also like to know from the researcher: Professor McCamus in his report went to quite some length to deal with the importance of refugee and immigration law, and we've had evidence before this committee about international treaties and decisions that would affect Canada and therefore Ontario. I would like to have some indication to this committee about what precisely are our treaty obligations or obligations under agreements that may have been entered into by Canada. In particular, you will recall that the Roman Catholic Diocese of Thunder Bay mentions the Geneva convention, the 1967 protocol, the Executive Committee Conclusion of 1977 and the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.

In addition, I'd like to know what specifically are our charter obligations. I know there certainly is case law around this point and I think we should have that evidence before us before we conclude our hearings.

**The Vice-Chair:** Will counsel see that those requests are met? Thank you.

#### FEDERATION OF METROPOLITAN TORONTO TENANTS' ASSOCIATIONS

**The Vice-Chair:** The next presenter is the Federation of Metro Tenants' Associations. Would you please identify yourselves for Hansard.

**Ms Barbara Hurd:** My name is Barbara Hurd. I'm the chairperson of the Federation of Metro Tenants'



Associations. With me is Hank Mulder, our vice-chairperson, and Hank is going to begin.

**Mr Hank Mulder:** The Federation of Metro Toronto Tenants' Associations is Canada's oldest and most active tenant organization. Our roots stretch back almost a quarter of a century. Our work in advocating for tenants is widely recognized, including by the three parties in this Legislature. To cite a recent example, each of your parties sent a senior representative to participate in a lively panel discussion about the future of tenants' rights at our annual general meeting on November 14.

Our federation depends on a large, active and informed volunteer base to provide our services to our members and other tenants in the greater Toronto area. We also depend on a network of professionals to whom we can refer tenants when they are in crisis, and to whom we can turn when an issue exceeds the capacity of our volunteers and our small number of paid staff. Given the environment we operate in, we find ourselves turning to the legal profession on a regular basis. We are one of the few organized consumer groups in the country to have such a close look at how legal services are actually delivered. And because of the reality of tenants' incomes, we, individually and collectively, do not have the resources to pay for these services. Thus, a flexible and innovative legal aid program is vital to us.

**Ms Hurd:** I would like to turn to some of the history of how the federation has interacted with the legal aid system before looking at the specifics of the proposed Legal Aid Services Act, 1998. At the time of our founding in 1974, there was little in the way of legal services provided to tenants. Just a few years before, in 1969, the landlord and tenant dispute resolution system had moved from the street to the courtroom. This was when amendments were made to the Landlord and Tenant Act that required a court order and the participation of the sheriff's office in the eviction of a residential tenant. Although this brought some order to the process, the lack of real rights for tenants did not make legal assistance in individual cases — the only kind of legal aid that was provided at that time — all that valuable for most tenants.

Most of the assistance we received from lawyers in those early days was provided on a completely voluntary basis by young lawyers and law students who shared our concern for social justice. Their work focused on three areas: giving summary advice to tenants; helping us organize ourselves into legally viable groups and projects; and helping us to present our concerns to the government bodies that could do something about the lack of rights which tenants of that time faced. These early experiences have shaped our views on how legal services should be provided to disadvantaged communities.

**Mr Mulder:** Once the legislative reforms that provided a measure of security of tenure were put in place in 1975, the provision of individual casework services became more important. There was now a possibility that a tenant could fight an eviction action in court and actually win. The legal aid certificate provided to the private bar lawyer to represent a low-income individual or family

became an important part of making those legislative reforms work. At the same time, the federation and other tenant activists were finding new ways to provide advice and assistance to tenants outside the legal aid plan. Again, we relied on the volunteer services of committed young lawyers and law students as well as organizers and advocates who were not lawyers.

Some of these projects were beginning to provide services that looked a lot like legal aid, so when the federal sources of funding that supported these groups ran out, the province stepped in. They added to the legal aid plan the first clinic funding regulation in order to provide a framework for providing financial support to the most developed of these projects. This low-cost, bare-bones funding also became available to new projects that could meet a demonstrated need. Thus the federation was able to co-sponsor a project called Metro Tenants' Legal Services that joined Parkdale Community Legal Services and other struggling groups to meet a variety of tenants' legal needs.

Metro Tenants' Legal Services met these legal needs in a cost-effective way by providing service to groups of tenants, and leaving individual representation to others. They were able to use the expertise they had developed to identify test cases that would advance or clarify the law. They used this expertise to make submissions to government bodies that were involved in the constant revision of landlord-tenant laws according to the shifting political winds.

**1600**

**Ms Hurd:** The resources made available to legal clinics as the system developed allowed, for example, full tenant participation in the Commission of Inquiry into Residential Tenancies, known as the Thom commission. But the competing demands on the modest level of resources and the active participation of tenants in the decision-making process allowed us to make an informed decision not to participate in that inquiry's second phase and to use these resources elsewhere.

This structure also enabled us to recognize the limitations of the expertise available through the clinics, and we turned to the private bar, specifically Mr Ian Scott before he became Ontario's Attorney General, when we were required to participate in the reference about the Residential Tenancies Act at the Ontario Court of Appeal and the Supreme Court of Canada. A flexible legal aid plan allowed us to put a clinic lawyer together with Mr Scott's pro bono contribution and funding for the disbursements. This allowed the voices of low-income tenants as a group to be heard for the first time at the highest court in the land.

The 1980s and 1990s saw a dramatic expansion of the geographic-based community legal clinics, providing tenants all across Ontario with a quantity and quality of legal representation that we could only have dreamed of when we began. Through their commitment to community control of their services, innovative methods of service delivery and a willingness to work with grassroots groups like ours, the high-minded ideals of much of our social legislation was actually being put into practice. As well,



the legal aid plan retained the flexibility to provide funding when tenants had to call on the private bar.

**Mr Mulder:** With the increasing emphasis in the late 1990s on individual self-reliance and the shrinking of government programs, it becomes even more necessary to ensure that the individual rights that replace group entitlements can be enforced. This is especially critical for those who do not have financial resources to cushion them from crises such as the threatened loss of a home, or dangers to the health or safety of one's family that are all too common in rental accommodation. While new legislation pertaining to tenants' rights, car accidents and disability issues may move these disputes out of the court system, they are complex and they protect vital interests. Thus, legal resources must be available when they are needed. We are very encouraged to see that this government is putting forth legislation that seeks to accomplish that goal.

**Ms Hurd:** As many of this committee's members may be aware, the FMTA has generally found the legislative initiatives of this government to be lacking. Some of our displeasure arises from our ideological differences with the governing party. But much of it has to do with the inability of some ministries and their ministers to organize meaningful public input on their initiatives and to listen to diverse opinions with an open mind. Fortunately for the people of Ontario, the Attorney General and his ministry have broken from this pattern.

Professor McCamus and the other members of the Ontario Legal Aid Review proved to be excellent appointments to the exacting task of researching legal aid issues, hearing the public's view and preparing a well-reasoned set of recommendations. Not only was a well-written report presented, but Mr Harnick and his cabinet colleagues actually decided to pay attention to what the report said. We believe the result is a bill that reflects the best traditions of the Ontario Legislature and, like the law it replaces, will become a model for the legal aid plans of other provinces and even other countries. We would encourage the government to pursue the kind of public consultation and research that went into this bill for future legislative initiatives and to abandon the prevailing models which keep the public out.

While we are pleased with the bill, there are two distinct but related concerns which we would like to bring to the committee's attention. First, we believe the quality of appointments to the board of directors of Legal Aid Ontario will be crucial to the success or failure of the Legal Aid Services Act. It is important that the government put knowledge, skill and experience ahead of the partisan considerations in making public appointments.

Furthermore, the criteria for selecting and for recommending people to serve on this board are extremely broad. We appeal to the Attorney General and to those members of the Legislature who may be in a position to review these appointments to put aside partisan considerations in order to select and recommend people who have demonstrated a commitment to equal justice for all, and to independent decision-making. We specifically ask that a

real effort be made to fulfill the requirement in the law that this board have knowledge, skill and experience in the social and economic circumstances and the special legal needs of low-income individuals and disadvantaged communities.

In our view, the entire system proposed by Professor McCamus and set out in Bill 68 depends on Legal Aid Ontario being aware of the needs of poor people and having the ability to operate independently of the government. Unfortunately, it appears that the cabinet has already foreseen policy disagreements with the board and has given itself a way to overrule the board's decisions. I refer you to paragraphs 13(3)(e) and 96(2)(b), which allow the cabinet to prohibit the board from providing certain kinds of services. This is a direct attack on the board's independence and should be deleted.

**Mr Mulder:** In conclusion, we have not hesitated to criticize this government, and its predecessors, when they have taken steps that we believe are contrary to the interests of our members and the tenants of Ontario. Similarly, when the occasion comes along, we do not hesitate to offer praise and support for laws that appear to meet their needs. We believe Bill 68 is deserving of our praise and support, and we promise that we will be doing what we can to ensure that the new legal aid system achieves its potential.

**The Vice-Chair:** We have approximately two and a half minutes per side. We will start with the government.

**Mr Martiniuk:** I want to ask a question that's not related — well, I guess it is. There has been a substantial change in the venue for landlord and tenant disputes, from the courts to a tribunal. How has that impacted on the demand and the time on your organization?

**Mr Mulder:** At the moment, the tribunal as it is running is very confusing to say the least. We don't like the way the tribunal is running the show. Decisions are made that, if we would have had legal representation for our tenants, the outcome would have been completely different. So we are not in favour of the way it is run.

**Ms Hurd:** I agree that the reports we are getting back from our staff is that tenants are having quite a difficult time there. I guess there really isn't enough expertise, knowledge, familiarity and access to legal services available to all tenants. Possibly some of the lowest-income tenants might be able to get one of the legal clinics to assist. But if you're of a certain income, you're basically on your own unless you can afford a private sector lawyer.

**Ms Castrilli:** I'm a little surprised by your presentation, and I'm particularly surprised in light of the response you just gave, that the tribunals aren't really working that well and that one of the things you need is legal assistance.

What, in this legislation, makes you think it's going to get better? I'm not clear on what you have told me. What I see is a system that says: "We're freezing monies to clinics for three years. We're not really guaranteeing anything beyond that. We know that 84% of certificates are now issued in criminal law matters." What makes you



think that tenants are going to fare any better under that system?

**Ms Hurd:** We're very concerned that there not be any erosion of clinic services, and this legislation seems to recognize the value of clinic services. In my mind it's separate from whether it's in a court or a tribunal, whatever body is making a decision. This legislation isn't about the body that makes decisions about tenants; it's about the body that provides funding for tenants to get assistance, whatever decision-making tribunal or court they're in front of.

**Ms Castrilli:** But isn't that the issue? If we know now that there's virtually no assistance, in terms of legal aid, for tenants who want to fight these cases — there may be other assistance, but there's certainly virtually none. We know that funds are going to be frozen. I fail to understand how you think it's going to get better. If anything, it's going to perpetuate the status quo. It's not going to make it any better for tenants.

**Mr Mulder:** We have had, as you heard in our brief, a very close working relationship with the Metro Tenants Legal Services. They were, as I said, a sister organization of the federation. I have been a board member of that organization for the last six years. Two years ago I was the chairperson of that board for one evening and I did such a good job that the whole board resigned because of internal strife. That is meant as a little joke, but it is really true. It was a tremendous problem and it couldn't be solved. That money was not allocated to tenants' needs after that fact.

1610

**Ms Castrilli:** Pardon me for interrupting, but that's a different issue. Would you not agree with me that all the boards in the world mean nothing unless there's some money to back it up?

**The Vice-Chair:** Thank you. Mr Kormos.

**Mr Kormos:** Go ahead, sir. Answer.

**Mr Mulder:** I'm just referring to the money they used to help tenants. We are just trying to get that amount back, or part of that amount, in order to start helping the tenants again. At the moment we are discussing old money that was used for the tenants, and we are trying our utmost to get part of it back.

**Mr Kormos:** You're quite right. This legislation approximates — and I say that very carefully — approximates the McCamus recommendations. The problem is that there's nothing in this bill which provides for a minimum standard or a minimum level of provision of services. I've got to tell you that these guys could do through the back door what they wouldn't dare do through the front door. They have sole discretion over the level of funding. You can defund legal aid and all the Bill 68s in the world aren't going to maintain any level of quality services.

I don't think either opposition party disputes the effectiveness of an independent board, an independent corporation etc. You heard from refugee advocates who noted that the bill ignores the McCamus recommendation that there be ongoing provision of refugee advocacy. The bill specifically excludes refugee advocacy.

I certainly wish you well. But I wish you well under a regime that wants to rob from health care, from public education — quite frankly, I'm convinced, from legal aid — so they can provide a tax break to its richest citizens. That's what defunding health care and public education and, at the end of the day, legal aid is all about. I wish the tenants' association well, and I wish them well with the next government as well.

#### CANADIAN BAR ASSOCIATION — ONTARIO

**The Vice-Chair:** At this time, we would like to call on the next presenter, the Canadian Bar Association. Would you please identify yourself for Hansard and begin.

**Miss Virginia MacLean:** My name is Miss M.V. MacLean. I am the chair of the government relations committee for the Canadian Bar Association. I'm grateful for this opportunity to make this presentation to you today. I would alert you that you will probably be seeing me tomorrow in Ottawa. We have decided, in the interest of the time allotted, to split our presentation. Mr Drukarsh, who is the chair of a special committee dealing with the legal aid task force, is here today to address most of the issues that are in the submission before you today.

I was going to briefly tell you what the CBAO is. I think most of you are aware of what the Canadian Bar Association is, but just so you know, it is not the law society, which is the governing body. It is the voluntary association of members, and it represents approximately 14,000 lawyers, judges and law students, many of whom work in legal aid clinics. It represents the interests of the legal profession in Ontario.

Briefly, I would like to address the portion of the submission that is set out on page 2, and that deals with the composition of the board, subsection 5(2) of the legislation. Our concern with that relates to the selection process being totally in the hands, in our submission, of the Ministry of the Attorney General, specifically the Attorney General. Our particular concern about it is that the corporation must be independent from the Attorney General, who is nominally the largest litigant before the Ontario courts. The composition of the board of the corporation and the selection of the chair, as proposed in the bill, requires the Attorney General to select each board member. Our question to you is, how can this be done and how can this board be independent if the Attorney General is controlling it?

The only recommendation we would make, as an association, is that the chair be selected from the members of the board at its first meeting in each year. Leave it up to the board itself to select its own chair, which is done in other boards that have been created by this government.

We also suggest that the five selected members identified in subsection 5(2) be two persons recommended by the law society and three persons who are jointly recommended by the Canadian Bar Association and the County and District Law Presidents' Association, who we understand made a submission to you earlier today. That

would be our recommendation as to a change in that portion of the bill.

I have with me Marshall Drukarsh, who will address the rest of our submission.

**Mr Marshall Drukarsh:** The CBAO does appreciate this appearance, which we frankly see as an opportunity to assist you to create a corporation that will be capable of achieving the goal of promoting access to justice throughout Ontario for low-income individuals. We support that goal wholeheartedly.

It is important to recognize that the corporation will be in the business of the provision of service. The omission of provisions for immigration law, the third largest product of legal aid, over 6% of its current business, will, we submit, inhibit the ability of the corporation to deliver.

It may come as no surprise to understand that I got into the CBAO as the chair of the immigration section and that's what led to this. We do understand that criminal law and immigration law are federal, that funding is complex. But we plead that there not be created a system that is incapable of providing the needed service as a tactic in the funding wars. You don't want to build a two-legged chair; the public is going to fall off.

With respect, immigration law is an important area of service to be provided. There is a demand; there will be a demand in the future. The specific provisions we have made call for the recognition of that fact. In particular, we are asking, with respect to section 1(b), the statement of goals and the method in which services are to be delivered, that the words "immigration law" should be inserted after "criminal law," such that it is recognized that immigration law is a service that, if it's going to be delivered, is best delivered with the *judicare* model.

In section 2, we propose the insertion of a definition "immigration law" includes immigration and refugee law." That may be apparent to some, but permit me to point out that immigration law includes a lot more. There is a certain amount of emotion around refugee law and sometimes, with respect, that emotion gets in the way of clear thinking about the issues.

Immigration law includes the provision of service for the low-income resident of Ontario, who, perhaps having sponsored a husband who is denied admission to Canada, wants to fight an appeal. Immigration law includes the service to people who are being detained by immigration, sometimes for extensive periods. Immigration law includes a variety of other services beyond merely refugee law, but refugee law is of course a major component of immigration law.

The CBAO proposes the amendment of subsection 7(1) by the insertion following the words "criminal law" of the words "immigration law." Section 7(1), as you know, provides for the creation of advisory bodies. There should, in our respectful submission, be an advisory body with respect to the provision of services for immigration law. This does not mean that the provincial government can necessarily be told by the federal government that no more will immigration law be funded. This means that if it's going to be a product to be delivered, there should be

advice to the governors by people who are in the business of delivering that service.

We propose the amendment of subsection 13(1) by the insertion of the words "immigration law" following the words "criminal law." In other words, we are proposing that the corporation be structured such that among the services that it shall provide, it shall provide services respecting immigration law.

We propose in subsection 65(6) that the words "for two consecutive fiscal years" be replaced by the words "for three consecutive fiscal years." We appreciate that under subsection 65(2) the budget is in three-year cycles. We appreciate that under 65(5) clinics are funded on a three-year cycle. We respectfully submit that immigration law is no less important a product to be dealt with.

#### 1620

Reluctantly, we came to propose a less preferable alternative to the amendment I have suggested to subsection 13(1) above if it is not possible, and it should be possible, to assert boldly that immigration law is an area in which service will be delivered. If it is not possible to do so boldly in subsection 13(1), then at the very least we propose that subsection 13(2) should be amended to indicate that subject to funding — 57(1), funding by arrangements with other governments; 67(1), funding by outside sources by other arrangements — the corporation shall provide services in the area of immigration law, and carry on to say that subject to subsection (3) the corporation may provide legal aid services in other areas of civil law not referred to.

Lest there be any concern that to build an appropriate vehicle for the delivery of services would somehow leave you stranded with the bill for providing all services, we'd submit a reasonable compromise to the change we propose to 13(2). We recognize that if you're doing so, there may have to be changes in section 68 respecting the segregation of funds. We understand that.

Another area that the CBAO proposes be looked at, and that my colleague will not be giving comments to you about in Ottawa tomorrow, has to do with the reporting provisions. We note that it's important that there be faith in the system. We note it's important that the people who provide services be bound to ensure that services are not abused. We would point out, however, that to have a provision that's too vague is to have a provision that's unenforceable.

We propose that subsection 43(2) of the legislation be amended by inserting the words "it reasonably appears that" following the words "any change in his or her circumstances, and, accordingly." What we're suggesting is that to have a kind of an absolute standard wherein one is always on the razor's edge of being second-guessed as to whether there has been a change in one's client's situation, is to create an unnecessary tension and is counterproductive. If it clearly states that where it reasonably appears that someone has become disentitled to legal aid there is a duty to report, then there is an enforceable duty.



With respect to subsection 95(3), which presently states in no uncertain terms that, "Any lawyer or service-provider who fails to discharge an obligation imposed under section 43 is guilty of an offence," we submit that that would be most acceptable if it were livable; in other words, if it were amended to say that a lawyer who wilfully or negligently fails to discharge an obligation imposed under section 43 is guilty of an offence. The combination of the two factors as they appear now, 43(2) and 95(3), create an unenforceable regime.

With those comments, I believe I've come to the conclusion of the two areas that I offered to assist you on today, and ask if there's anything further that I can help you with.

**The Chair:** We have three minutes per caucus, and we'll begin with the official opposition.

**Ms Castrilli:** Thank you very much for a very crisp and to-the-point presentation. Could I just seek clarification on a number of issues? One of the first things you mention is the independence of the board, and we agree with you with respect to that. You're not making any comment with respect to the members who would be appointed by the Attorney General. You're only concerned about the ones appointed by the law society in concert with the Attorney General. Is that right?

**Miss MacLean:** Indirectly. We are also concerned about the appointment of the chair, because the Attorney General was to appoint the chair. What we're saying is, rather than have the Attorney General appoint the chair, let the members of the board appoint their own chair among themselves, as opposed to having an appointed individual.

**Ms Castrilli:** I understand that concept, but you're not opining on whether the Attorney General ought to have the ability to appoint the other five members; that's not one of the concerns that you —

**Miss MacLean:** The additional five who aren't recommended by the law society?

**Ms Castrilli:** Right.

**Miss MacLean:** No, we're not commenting on those five.

**Ms Castrilli:** I am curious about refugee and immigration law. It's really an issue of terminology. In his report, Professor McCamus very clearly called it refugee and immigration law. He goes to great length distinguishing the two. Are you telling us that if we just had immigration law in the context of this legislation that would be sufficient to include refugee law? Would we need a definition section to say that, or is that sufficient in your view?

**Mr Drukarsh:** My suggestion to my committee, which has made it our suggestion, was that identifying immigration law throughout and by including, as with criminal law, the definition, makes it clear that where we refer in the existing situation to criminal law, we're saying that includes legal matters respecting provincial offences and young offenders. For convenience, as a 25-year immigration lawyer, I think of it as immigration law, and we're putting forward the proposition that if a definition of immigration law includes immigration and refugee law, it

would do two things: It would make simple terminology, and at the same time it would establish a certain level of permanence.

In our view, the shorthand way that people often access legislation is to look at definitions. To a large extent, what we're fighting for here is recognition of the existence of immigration and refugee law as a product line, as something that is an area of service that low-income Ontarians need, not only refugees but other low-income Ontarians. In our respectful submission, to have that recognition, it's of great convenience to have the term defined, to have it in there for that purpose.

**The Chair:** We have to move to the third party.

**Mr Kormos:** Mr Drukarsh, specifically to you: This tension between the law society and the CBAO is quite interesting to watch. I'll leave it at that. We had the law society here this morning, and one of the things I didn't have time to ask, especially one Robert P. Armstrong, Esq, no less, chair of the legal aid committee, was if he does legal aid work. I regret not having been able to ask Mr Armstrong, Esq, but I'll ask you. Do you do legal aid work in your area of immigration and refugee law?

**Mr Drukarsh:** Absolutely.

**Mr Kormos:** I'm not suggesting a conflict here. I want to hear from people who do it.

**Mr Drukarsh:** What I'm suggesting to you, sir, is that to have an education is a privilege. To use your education to assist people is a way to make a living and a privilege. But there comes a time when you can only do so much pro bono, because your staff want to be paid at the end of the day and so does the landlord. If there is a workable scheme for the provision of legal aid, then it's used. That's one of the benefits of being a member of the Canadian Bar Association. We have in our sections organized people who are immigration and refugee lawyers, citizenship and immigration lawyers. We have criminal lawyers organized into groups. That's one of the reasons we're in a position to make a contribution.

**Mr Kormos:** I know that, and you're making a good contribution. In section 3(b)(i)(e) you talk about "the complexities of funding legal aid services in areas of federal jurisdiction." With due respect, that seems to fall into the phony argument of the government about funding for refugee services. The Narcotic Control Act is federal jurisdiction, the Criminal Code is —

**Mr Drukarsh:** Exactly.

**Mr Kormos:** YOA, which mandates provision of counsel, is federal jurisdiction. All I'm saying is that it seems to fall into the phony argument of the government that they're merely engaged in some sort of dialogue with the feds over funding. Do you understand what I'm saying, that we're sort of off point if we buy into that argument? The province is constitutionally responsible for legal aid; it's either going to provide it or it isn't.

**Mr Drukarsh:** Absolutely, and I thank you for picking up on the point I was making on behalf of our organization. Criminal law is federal statute. There's a service that's needed for the citizens of this province. They don't get second-rate judges just because they're poor. They

don't get shabbier courtrooms to stand in than rich people. Immigration services are needed by the people of this province — the woman who's fighting to bring her husband over, the kid who's been in Canada since he was a child but is now being ordered deported and needs a lawyer to help him fight, the person who gets off an airplane and is being detained, and there is provision in the regulations for the setting of requirements for when it's appropriate to give services to out-of-province persons. Those people are entitled to the best that can be provided. You cannot have second-rate justice for some. I couldn't agree more, sir.

That's one of the reasons why in our area in particular, where there are a variety of consultants and paralegals, an issue that will be addressed by my colleagues at another presentation, it's so important that we be certain that the lawyers can be funded; where regulated, trained, responsible people can be adequately funded to ensure that people get the services they need in immigration and refugee law.

**The Chair:** We now move to the government members.

**Mr Martiniuk:** I am advised that there was substantial consultation both before the drafting of this bill and afterwards. Can you tell me what consultation you had with the representatives of the Ministry of the Attorney General in regard to this bill?

**Mr Drukarsh:** There has been, to my knowledge, ongoing consultation, meetings from time to time. The head of the Attorney General's task force, who's with us today, has chaired meetings both with the CBAO and with the particular CBAO task force on this specific topic of legal aid. I became a member of the group a year and a half or so ago, and the chair moments before we had the opportunity to write and prepare this brief. There has been an opportunity for an exchange of ideas and I am grateful for that opportunity, which at the same time does not diminish my wistfulness that some of the things I have

been communicating are not necessarily reflected in the legislation.

**Ms Castrilli:** Good answer.

**Mr Martiniuk:** I must say that somehow your brief feels that we're slighting immigration law in some respect, when we're the first government in Ontario to recognize the importance of immigration and refugee law by giving guaranteed funding for a two-year period. But that isn't the question I would like to ask you.

**Mr Kormos:** Oh, go ahead.

**Mr Martiniuk:** What I would like to ask you —

*Interjection.*

**Mr Martiniuk:** Please don't interpret this as mean; I don't mean it so. For some reason you feel that the CBAO and the County and District Law Presidents' Association might be better qualified than the law society, knowing full well that the law society, of necessity, represents all the lawyers in Ontario, where your two organizations, even in combination, do not represent all the lawyers in Ontario. Considering the ongoing negotiations of two years for amalgamation of your two organization, are you certain that you could come up with a joint recommendation?

**Miss MacLean:** Mr Martiniuk, are you talking about CDLPA, the County and District Law Presidents' Association and the Canadian Bar Association?

**Mr Martiniuk:** Yes.

**Miss MacLean:** We have been meeting. Not only are we discussing, but they sit in on meetings of our table officers. So, yes, I'm confident that we can come up jointly. I would say that it's not an issue with respect to the law society because they would still have the right to make recommendations with respect to their two; we're just looking for three.

**The Chair:** Thank you, Mr Martiniuk.

This committee rises until 10:30 of the clock tomorrow morning in Ottawa.

*The committee adjourned at 1635.*











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## Legislative Assembly of Ontario

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## Assemblée législative de l'Ontario

Deuxième session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 18 November 1998

# Journal des débats (Hansard)

Mercredi 18 novembre 1998

**Standing committee on  
administration of justice**

Legal Aid Services Act, 1998

**Comité permanent de  
l'administration de la justice**

Loi de 1998 sur les services  
d'aide juridique



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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Wednesday 18 November 1998

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Mercredi 18 novembre 1998

*The committee met at 1035 in the R.A. Centre, Ottawa.*

## LEGAL AID SERVICES ACT, 1998

## LOI DE 1998

## SUR LES SERVICES D'AIDE JURIDIQUE

Consideration of Bill 68, An Act to incorporate Legal Aid Ontario and to create the framework for the provision of legal aid services in Ontario, to amend the Legal Aid Act and to make consequential amendments to other Acts /  
Projet de loi 68, Loi constituant en personne morale Aide juridique Ontario, établissant le cadre de la prestation des services d'aide juridique en Ontario, modifiant la Loi sur l'aide juridique et apportant des modifications corrélatives à d'autres lois.

**The Chair (Mr Jerry J. Ouellette):** I bring the standing committee on administration of justice to order to deal with Bill 68, the Legal Aid Services Act. At this time we would call the presenters we have available.

CANADIAN BAR  
ASSOCIATION — ONTARIO

**The Chair:** We'll be having the 11:30 appointment come forward, the Canadian Bar Association — Ontario. If you could identify yourselves for Hansard, we would appreciate it. There's a total time allocated of 20 minutes. At the conclusion of any presentation you may have, your time is divided equally between the three caucuses for questions and answers. Thank you for coming. Just before you begin — yes, Mr Kormos.

**Mr Peter Kormos (Welland-Thorold):** I want to indicate how pleased I am to be in Ottawa, in Mr Patten's and Mr Guzzo's bailiwick, and how nice it is to have these hearings in a building that is owned and that contains programs that are sponsored by, as I understand it, members of the Public Service Alliance of Canada, at least historically. This is as close as we're going to get to a union hall. I'm pleased to be here with the efforts of my sisters and brothers in the federal public sector and I look forward to more occasions. I can help with CAW halls, steel halls or what have you across the province if the government wants any help in that regard.

**The Chair:** Thank you, Mr Kormos. You may begin, please.

**Mr William Simpson:** Good morning. I'm Bill Simpson. I'm from Ottawa and I thank Peter Kormos for his comments.

**Mr Simpson:** Virginia MacLean from Toronto, who appeared before you yesterday, is also here. We are the 11:30 group and not the 10:30 one. What happened, I was told, is that both participants in that, Heather Perkins-McVey and John McMunagle, got called for trials. They both do criminal law and they're in trials and they cannot make it. Somebody has to do some work.

We are pleased to be here and we will try to be short in our submission. You have been given, I hope, a copy that we gave the clerk this morning. I will talk about some of the additional points that were not raised yesterday in the Toronto submission and were not before you before, at least from our point of view.

The first item I'd like to start off with is ensuring the secrecy of clients' files. That's the topic on it. This problem comes about as a result of the quality audits that are allowed by the bill. Quality audits are not something we're complaining against at all. The only thing we're talking about here is whether or not the public who are legally aided should have any different rates than somebody who is not legally aided. The concern we have is that the quality audits that are allowed under section 91 of the bill allow somebody to go in and look at any files regardless of whether there are confidences or there is solicitor-and-client privilege involved with them. In that case, it is a concern we have that the clients should at least be advised and should have the right.

We heard from a clinic in Toronto that they were undergoing a quality audit some time ago and they took the position that they didn't want their clients' files looked at without authorization from the clients. They finally worked out a scheme whereby each of the clients was sent a letter with an authorization. This was a clinic that dealt virtually solely with elder law. They were all senior citizens and all the clinic clients were sent a copy of this authorization. Most of them sent it back and said, "Sure, go ahead and look at my file," but they got a significant number of people saying: "Look, that's my file. I don't want anybody else looking at it regardless of who they are. I am talking to one lawyer in that office who is looking after me and I do not want any of my files to be looked at by other people who are just coming in to do a quality audit."



Our suggestion on that, as you can see on page 2, is that you make a couple of minor amendments and you ask the clients for their authorization. We're not talking about somebody who is defrauding the system or anything like that. We're talking about ordinary clients who have problems and have come in to get them resolved. We're saying, "Don't let everybody take a look at those." There's an easy way around it. You can get enough people who will give their permission.

The second point I want to raise this morning, and the last point, is with respect to protection of the public from unregulated independent paralegals, as you can see at page 2, item 3. The concern we have now is that the bill as drafted allows for paralegals to actually receive legal aid certificates. We understand that perhaps that wasn't the intent of it, that the intent here was to allow minor work to be done under the supervision of a lawyer, and that's fine. But the situation you have here is that if you have paralegals who are independent, very often they have an arrangement with a lawyer and they'll say, "That's my lawyer and everything I do is under his or her direction," which isn't quite so.

What we're suggesting for the recommendations is that you define "service provider" by eliminating the inclusion of a paralegal in it; that you add a new definition of "paralegal" to mean a law clerk or other legal person working under the direct supervision and control of a lawyer; and finally, that you amend it by saying that a paralegal shall not provide legal aid services except under the supervision of a lawyer who has a certificate to provide legal aid services. I think that was the intention of this legislation to begin with, but because of the way it's worded, there seem to be some loopholes in it. I'll turn it over to Virginia MacLean to continue.

**Miss Virginia MacLean:** Mr Chairman, members, I will repeat the comments I made yesterday. Most of the committee members have heard it, but it picks up on an area which I think wasn't clear at the end of our discussion yesterday and was related to who was going to be the chairman of the board. It's our recommendation that there be 10 members on that board and that three of those members be people who are recommended by CBAO and the County and District Law Presidents' Association jointly — because we get along, Mr Martiniuk. The other two would be a recommendation from the benchers of the law society, and then five more, probably lay people, would be appointed by the Ministry of the Attorney General. Then they'd meet and select their own chairperson. That would be our recommendation with respect to the composition of a board which would not be controlled by the Ministry of the Attorney General. That, briefly, is the submission. I believe Mr Simpson will have concluding remarks here addressing an issue which we think is very important that relates to funding.

**Mr Simpson:** The concern I think of anybody who is concerned about legal aid is whether or not there's going to be a commitment to the funding by both the provincial government and the federal government. We know that there are ticklish transfer payment problems and every-

thing else that is here. But unless there is a commitment by both levels of government to properly fund this, there is a difficulty in seeing it go through and there will be problems down the way regardless of who is administering it. Unless there's sufficient funding to do the things that are necessary, it's not going to succeed.

**The Chair:** Thank you very much for your presentation. That allows us over three minutes per caucus. We begin with the third party. Mr Kormos? No. I believe we'll begin with the government members.

**Mr Gerry Martiniuk (Cambridge):** Thank you very much for your presentation here today. I'm just interested in exploring the consent to examination of files in regard to a quality audit. I believe that there might be difficulty in locating a number of these people. Would that not be correct?

**Mr Simpson:** I wouldn't have thought so. They're all clients who are either on a certificate or are clients of a clinic, so they shouldn't be too hard to contact.

**Mr Martiniuk:** What is to prevent a solicitor who is concerned with what an audit might find from recommending to his client that the files not be examined?

**Mr Simpson:** I guess there is nothing that would prohibit that from happening. If all of a sudden you got one particular solicitor whose clients all say they won't consent, then you know you've probably got a problem with that solicitor.

In the ordinary course of events, first of all, the director of legal aid is going to know the addresses of each and every one of these people. The legal aid director can correspond directly. They don't have to go through the lawyer. If there's a problem with a particular lawyer, the client is going to be very interested in finding out as well.

**Mr Martiniuk:** Let's assume that the lawyer involved has a number of files. How long would you assume this procedure would take?

**Mr Simpson:** To do what? To ask for their consent?

**Mr Martiniuk:** Yes, and obtain it.

**Mr Simpson:** First of all, these quality control audits, as I understand them, are not something that have a time constraint to them. First of all they're not in the ordinary course. There aren't necessarily bells and whistles going off to ensure that somebody is going to look at them. They're going to be scheduled a month or two months in advance, perhaps — I don't know — but there can be some problem. I know that in the example I was giving you in Toronto with that particular clinic, they got enough people to make it a valid quality control audit but it protected the secrecy and the privacy of the individuals.

**Mr Martiniuk:** Would you not envision that some follow-up would be required for people who don't even answer the letter?

**Mr Simpson:** It may need some follow-up.

**Mr Martiniuk:** Which will take additional resources. Who would pay for that?

**Mr Simpson:** I don't think you're looking at getting 100%. If you're doing a quality control audit — and I don't know what the statistics are; it's not my bailiwick — I know you don't need 100% of the people. You don't

need each person to reply to you; you need a proper statistical number of them. That may be as low as 10% or 15%, I don't know, but you don't need to go through all the files, so you don't have to follow up.

**The Chair:** Thank you, Mr Martiniuk. We now move to the official opposition.

**Mr Richard Patten (Ottawa Centre):** In the same area, the privacy commissioner has already expressed concern in a number of fields, especially in the medical field, with the right to confidentiality of files. I would ask this: If the purpose of the audit is really the fairness of the charges and work done for a client, what would be your recommendation as to how you can keep the content of a file separate from schedules or times met, or what sorts of things could occur that might be able to be verified in a different manner, other than the examination of the content of a file?

**Mr Simpson:** I think at the present time, when the law society goes in to do their auditing, that type of auditing, they are able to look at all the financial information, all the financial records including the trust accounts and the bills and so on. They don't necessarily have to go into the solicitor and client files, and they shouldn't be going into them, in our submission. I know there are solicitors who actually keep separate from the client files the privileged and confidential material. They will keep it separate and that's something all solicitors can do if they choose to.

1050

**Mr Patten:** That seems eminently wise and satisfactory to me. If there is, perhaps by exception, a question about a particular file that may be contentious, then perhaps in that instance, which may be by exception, as I say. That might answer the question.

**Mr Simpson:** Yes.

**The Chair:** Thank you, Mr Patten. We'll move to the third party.

**Mr Kormos:** To carry on with this particular issue, let me ask you this: If I retain you, let's say, to defend me after I've been charged by the Attorney General on a phony, trumped-up —

**Mr Simpson:** That would never happen, Mr Kormos.

**Mr R. Gary Stewart (Peterborough):** Only you, Peter.

**Mr Kormos:** — on a phony, trumped-up beef that was entirely political in its nature —

**Mr Garry J. Guzzo (Ottawa-Rideau):** You would have asked for a jury, Peter.

**Mr Simpson:** I don't have to answer that, do I?

**Mr Kormos:** — because we caught the Attorney General in an embarrassing position, to wit, having lied to the people of Ontario about the status of the family support plan office.

**The Chair:** Mr Kormos, I would ask you to withdraw the remarks.

**Mr Kormos:** Unfortunately, in committee you don't have the power to do that, Chair.

**The Chair:** I do have the power to ask for it. You don't have to comply with it but I have the authority to ask for it.

**Mr Kormos:** Thank you kindly. Let's carry on with the question. Don't use my time, Chair.

Let's assume that were the case and I retained you to act for me. Who is the owner of the contents of the file? Whose property are the contents of the file that you have in your office? I don't expect to take my file with me after you've got me an acquittal and had the judge dump all over the prosecution because it was such a phony, trumped-up charge. Who has property in that file?

**Mr Simpson:** The client is basically the person who has the property in the file. The lawyer may have property to certain parts of it, but the bulk of the file belongs to the client, in my opinion. I'm not even sure if my colleague will agree.

**Miss MacLean:** I agree 100%.

**Mr Kormos:** I wasn't sure. I'm relying upon your expertise in this regard.

**Miss MacLean:** No, that's right. It's your file.

**Mr Kormos:** To reinforce the concerns you raised about notwithstanding an audit for the purpose of quality assurance, the need to obtain the consent of the client, would there be a scenario wherein a lawyer who has possession of the file — is it a fiduciary duty to the client?

**Mr Simpson:** Certainly there are fiduciary duties. The biggest thing here is that when you get a solicitor and client privilege, the privilege belongs to the client. It does not belong to the lawyer. The lawyer cannot waive that privilege without the client's consent.

That was one of the problems in the case that took place recently under the Criminal Code out in Alberta where Madam Justice Veit threw out the provisions of search and seizure in a lawyer's office on the basis that it was up to whoever was present in the lawyer's office, when the storm troopers came in to take a look and seize things, it was up to somebody in that room to say, "No, you can't look at that file at this point in time because we say there's privilege."

If there wasn't anybody there, if the lawyer was sick or ill or anything else, there was no privilege claimed and the police could take it away and they could look at it and so on, what she basically says is: "Hey, you can't do that. It's the client who owns the privilege."

**Mr Kormos:** On the sections you're critical of, do you think the government is inviting litigation, in terms of the sections that the government proposes, interfering with the rights of that client? The government doesn't have a very good track record — this government doesn't, anyway — when it comes to the courts. It has lost almost every case it has embarked on as far as I'm aware. Do you think the government is inviting yet more litigation because of the violation of a client's right vis-à-vis his or her own file?

**Mr Simpson:** Let me put it this way. We have also made a very similar argument on Bill 53, which this committee will be hearing at some time, which is the act to amend the Law Society Act. We have the very, very same concerns there. Protection of the solicitor-client privilege is not there, and the concern is that if it's taken, there could be lawsuits over it. I can't tell you the extent of that.



**The Chair:** Thank you very much for coming forward and presenting today. We very much appreciate it.

**Mr Simpson:** Thank you all. If I may, we have left with the clerk copies of our submission on Bill 53. We thought it was an opportune time to pass them out to the members of this committee so that they could have them at this point in time. I know it's not what you're dealing with today; I understand that.

#### COUNTY OF CARLETON LAW ASSOCIATION

**The Chair:** At this time we would call our next presenter, the County of Carleton Law Association. If the representative could come forward and identify yourself for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Mr Ken Hall:** Good morning. I'm Ken Hall. I'm a trustee for the County of Carleton Law Association. My duties are with the criminal section of that association. I've been involved with legal aid. Just by way of some background, I'm a criminal defence lawyer and have been for some 21 years. I think I've survived the legal aid crisis and here we are again.

How are you, sir?

**Mr Guzzo:** Very well.

**Mr Hall:** Good.

I was just sitting there for about 10 minutes and I think that I am going to be reinventing the wheel here, but from what little I got of Mr Simpson's submission, he has also addressed — and I'm sure it's not new to you — what our concerns are. Not to get anecdotal, but let me just go back in time. As an association — and as you'll hear later on in the morning from Mr Boxall on behalf of the Defence Counsel Association of Ottawa — we have long supported the judicare system and the certificate system, and I note from the draft bill that those in some principle and fashion are maintained.

As an overview and maybe as a personal observation, I can also tell you that we have, as I indicated, survived the legal aid crisis. When that was going on, a number of options were bantered about; that is, whether the law society should keep the plan, whether it should give it up, whether it should be handed over to an independent panel. Quite frankly, there was a lot of support for the position that better a devil you know than a devil you don't. But at the end of the day it was decided that it would be handed over to this what I thought in any event was an independent committee; you call it a corporation or board.

The first comment I'd like to make in review of the bill — again I apologize if I'm repeating old news here — concerns section 5. Paragraph 3 of subsection 5(2) says, "Five persons recommended by the Attorney General," which was always understood to be the status quo. Then go up to paragraph 2, "Five persons selected by the Attorney General...recommended by the law society," and go to paragraph 1, which says the chair of that is to be one person appointed by the Attorney General on recom-

mendation. On appearance alone, it seems that this is a committee of the Attorney General.

If you just cross-reference that with the reporting section, which indicates that the commission is to report to the Attorney General — to be frank with you, we have some concerns. Is this a committee of the Attorney General or is it completely independent? When we recommended that it be handed over, we were under the impression it was going to be five, five and one. I just want to caution that the impression that's left in reading section 5 is that it's the Attorney General.

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The other concern we have, and I heard Mr Simpson speaking of this, relates to the paralegals. In your definition section, you call them service-providers. There's a lot of discussion of late with regard to paralegals entering the fray and becoming part of the legal establishment. Call it what you will, a selfish interest — I don't think I would go that far — but paralegals are very topical these days. What you have in your section 14, and indeed section 31 of the bill, is an institutionalization, in my respectful submission, of paralegals. My read of it is that you have a vehicle in which paralegals, under the auspices of one or two or whatever lawyers, can not only provide services but actually, if you read section 31, can not only be issued certificates but also be accountable for the accounts and the various entries pursuant to that certificate.

What I see happening here, and there are other commissions ongoing in this regard, is an unregulated body being now incorporated in this bill. I know that there are committees going on with regard to paralegals, but at this point in time they're unregulated. I know the omnibus bill that's coming out in February may address some of the criminal defence bar concerns but at this point it's unregulated.

One of the other concerns I have is the wording of sections 19 and 20 with regard to clinics and duty counsel. When we were going through the legal aid crisis, one of the big motivating factors was the anecdotal history of dumpsters who were abusing legal aid, the dumpsters who would do 400 pleas of guilty in a row and —

**Mr Gilles Bisson (Cochrane South):** A very profitable business.

**Mr Hall:** The theories or the stories were that these dumpsters were doing 400 pleas of guilty in a row and they were billing the plan \$400,000, \$500,000. In reality, what's happening right now is that the duty counsels and the staff lawyers addressed in sections 19 and 20 are becoming dumpsters. I guess the theory at the end of the day is that it's wrong to be a dumpster at \$400,000 a year but it's OK to be a dumpster at \$40,000 or \$50,000 a year. That's a concern. I just hope somebody has stood at the legal aid door these days and seen the lineup of people who go into legal aid and are processed like numbers. I don't have the stats with me, I can provide them for you, but they get 10 and 15 new clients a day. Somehow that is OK if you're a staff lawyer staffed by legal aid.

The status quo as it stands right now, and I should say I'm dealing in criminal terms now, is that these duty

counsel cannot do any proceeding cases. What they do is they offer whatever advice they can in the one or two or five minutes they have with these people. If the suggestion is, or the client's instructions are, that he's to go to trial, he's sent to trial all on his own.

I'm a bit concerned about the duty counsel section, subsection 20(2) of your bill, "A lawyer who acts as duty counsel shall perform such functions as may be prescribed." I see the day coming when we're going to again be institutionalizing the public defender system of the States. I don't want to get into a long philosophical discussion, but the certificate system, in my respectful submission, works. It individualizes the client. It gives specific attention to that client that I think the numbers can't give through the duty counsel system.

Don't mistake what I'm saying. There is a need for the duty counsels, but their function has to be, I think, more defined in the bill. As I say, I think the door is opening to public defenders in Canada. Let me just tell you the reality of the situation in our courts — and it may be a fault of the judiciary; it may be a fault of the system — that when these underrepresented accused do end up in our trial courts, the duty counsel presently is being asked to attend to those matters in trial court. That is not their mandate but, as I say, I think subsection 20(2) opens the door.

The other concern I have — and, again, maybe it's because we're a bit gun-shy after the crisis — is the transition period and the transition from the law society to the Attorney General. I'm a bit concerned about ongoing, unpaid bills during that transition period. I think the bill can be fine-tuned a bit more in that regard.

I'm also concerned about ongoing obligations that the law society may have. I know it's addressed in the bill but, as I say, I think it needs some fine tuning with regard to ongoing obligations: leases, salaries, leases of office space, leases of equipment. I think that matter has to be addressed as well.

**The Chair:** That allows us over two minutes per caucus. We begin with the official opposition.

**Ms Annamarie Castrilli (Downsview):** Thank you very much for being here this morning. You raised a number of issues. I'd like to pursue two of them that we've not really had much discussion on in the time that we have.

Let me raise the first one, which is that virtually everybody who has come before us has expressed dissatisfaction with the appointment process and with how the individuals who are to be appointed are going to be selected. Everybody has told us that they want input in that selection process. As we sit here as legislators, I'd like to hear from you why, for instance, your proposal is better than so many others that we've heard. I'm not trying to play devil's advocate. I'm really trying to understand how we balance everybody's interests in this, knowing full well that you do have a very real role to play.

**Mr Hall:** You mean about the Attorney General?

**Ms Castrilli:** Yes, absolutely. We've had people say, "You've got to have tenants' views on this. You've got to have immigrants' views on this. You've got to make sure

that they're represented on the board. You've got to make sure that aboriginal people are there." I'm just wondering if you can give us any advice as to why your model would be superior to so many others that we've heard so far.

**Mr Hall:** This may be opening up a whole can of worms, but I don't know why the emphasis is on non-lawyers either, not that other factions of society shouldn't be represented, but lawyers are the ones who work in the courts every day. They are the ones who do the family law. They're the ones who know the concerns of the courts and of the process.

I'm not answering your question, but I don't know why lawyers can't be involved in that process on an independent basis. Why is it that the Attorney General gets to appoint these people? Are we catering to the various groups or are we catering to a system that we want to work better?

My read of the government is that it's the bottom line and they want everything to work better for the least amount of money. I think if that can be accomplished by way of, as I say, lawyers dealing with it — but I always thought it was to be independent. The Attorney General did not have that overseeing of —

**Ms Castrilli:** But you would agree that —

**The Chair:** Thank you very much, Ms Castrilli. We now move to the third party.

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**Mr Kormos:** Mr Bisson has a question as well.

Thank you kindly, Mr Hall. You know the member for Ottawa-Rideau. You've known him for a good chunk of time, haven't you?

**Mr Hall:** Yes.

**Mr Kormos:** You've known him as a good lawyer, an experienced lawyer?

**Mr Hall:** I never knew him as a lawyer before, but as a judge.

**Mr Kormos:** You knew him as an experienced judge.

**Mr Guzzo:** Be careful, Peter. He's brutally honest.

**Mr Kormos:** You've witnessed this government over the course of the last three years, haven't you?

**Mr Hall:** Yes.

**Mr Kormos:** And you saw what the Attorney General did with the family support plan?

**Mr Hall:** I understand that.

**Mr Kormos:** Don't you think Mr Guzzo would have made a better Attorney General than Charlie Harnick? Now tell us the truth. Don't you think he would have been a better Attorney General than Charlie Harnick?

**Mr Hall:** You're putting me in a rather awkward position here.

**Mr Guzzo:** I don't like New York on the weekends.

**Mr Kormos:** If they're free, what the heck, Judge.

**Mr Hall:** I'm not addressing my comments to a person. I'm addressing my comments to the office of the Attorney General. It just smacks of — everything has to be approved by the Attorney General, not the person.

**Ms Castrilli:** Good answer.

**Mr Bisson:** I just have a quick question. We know that the government wants to allow paralegals to be able to get



a certificate. The second point is that we know that profession is unregulated. We also know that if they're unregulated and they get a certificate and they botch the job, there's no way that the public can get at them in any kind of way to try to fix the mess that has been created. So why in heck would the government want to allow paralegals to get certificates? What's going on here?

**Mr Hall:** I don't know. You'd have to ask them. I agree with you. I see nothing wrong with the quality controls that are presently in place by the law society. Call it self-regulated, but I think we're well regulated. The assurance controls that we have are there. They've opened the door. I know they've opened the door.

**Mr Bisson:** Shouldn't we regulate them or allow them to be self-regulated before we allow them to give certificates? Shouldn't we do that first?

**Mr Hall:** I don't want them in there in the first place.

**The Chair:** We move to the government members.

**Mr Guzzo:** Ken, thank you. I appreciate your comments. I know you're here in your capacity as the legal aid chair, but I'd like to talk you as a practitioner of 21 years.

**Mr Guzzo:** A large percentage of legal aid money has gone to immigration law, or what they call immigration law. Eighty per cent of that is probably refugee law, and we're told that 90% of all refugees who come to this country go to three cities, Vancouver, Toronto and Ottawa, two of them here in Ontario. My question is this: Can you envisage a situation where a refugee, a person who illegally lands in this country, would be entitled to —

**Mr Kormos:** Whoa, whoa. You're a refugee, but not illegally, Judge.

**The Chair:** Order, please.

**Mr Guzzo:** All right — who, without pattern or design, arrives in this country, would be entitled to the funding of legal aid in advance of a citizen of this country who has paid taxes, and particularly somebody like a married woman involved in a matrimonial and a custody dispute? Can you envisage a situation where priority should be given to a refugee over a taxpaying citizen of this country?

**Mr Hall:** No. Back in 1991 or 1992 when the law society was meeting with regard to the legal aid at the start of the crisis, we made a pitch that immigration law and the funding of immigration law should be shouldered by the federal government. It's federal statute-based, if I can call it that. I'm misspeaking my words.

**Mr Guzzo:** So is criminal law.

**Mr Hall:** So is criminal law, but you're right. It is centred in three cities and has overtones to it other than criminal law. Criminal law is coast to coast.

**The Chair:** Thank you very much for coming forward with your presentation today. We very much appreciate it.

#### ASSOCIATION OF SEPARATED AND DIVORCED WOMEN

**The Chair:** We would call upon our next presenters, the Association of Separated and Divorced Women. If you

could come forward and identify yourselves for Hansard we would appreciate it. Thank you for coming. You may begin.

**Ms Gabriela Bronec:** Thank you for the opportunity to appear in front of the committee. This is our first time so it's kind of a premiere for us. We've had very little time to digest the bill in front of us, so we have made as many recommendations as possible in the given time. I shall mention some of the parts of the submissions —

**The Chair:** Before you go on, could you just identify yourself for Hansard, please?

**Ms Bronec:** My name is Gabriela Bronec and I'm president of the association. This is Rosslyn Emmerson, vice-president, English, and Barbara Mackey, our director and coordinator of support groups.

We are the Association of Separated and Divorced Women. We are a membership-based, independent, non-profit, voluntary, non-partisan, inter-denominational organization run by women for women in Canada and registered in Ontario since 1994. Since then we have represented over 2,000 women. We work on the front lines. Notwithstanding that we provide services for women, we do not exclude men. If a man calls up, he will have the same treatment as the women would.

Our mandate is to provide support, education, referrals and advocacy for women and children experiencing the dissolution of marriage by separation and divorce, with the aim of achieving economic equity for these women and children.

We have found that after separation and divorce, and during it, most women are experiencing incredible impoverishment, and as a result they are discriminated against in all manner of services. The legal services are the most important as far as we're concerned, so to that end, when we looked at Bill 68 we concentrated on the following aims.

Access: to ensure that low-income families have comprehensive access to the legal aid services they require during the separation and divorce.

Quality of service: to ensure that low-income families have access to legal services of a comparable quality to that available to other families not dependent on legal aid.

Recourse for complaints: to ensure that there is an appropriate and effective means to appeal eligibility decisions and to have redress for complaints concerning financial arrangements and both the timeliness and quality of legal aid services in family law cases.

Alleviation of hardships borne by children: to ensure that the children of families experiencing separation and divorce are not exposed to further hardship and disruption in order for their parents to pay for legal aid services.

I will not speak about all of our recommendations because I will probably run out of time, so I shall touch on only the most important, as far as I can see, in this bill.

Recommendation 3: The corporation is required to provide legal aid services in all areas of family law. We recommend that Bill 68 explicitly stipulates each of the sub-areas of family law for which the corporation is

required to provide legal aid services. This is part III, subsection 13(1).

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We found that the bill is called "legal aid services," and we went through pages and pages of how the corporation will be set up and so on. When we get to part III, section 13, there is one small paragraph referring to the services. We were amazed, because since 1994 legal aid has been cut drastically. Legal aid certificates were issued on a very sporadic basis and they were issued in different categories. I have the 1996 one here. There were six categories or priorities: first priority, second priority, third priority, fourth priority, fifth priority. These priority applications were just a horrendous problem for our women. They couldn't argue their cases properly. They couldn't get decent lawyers because lawyers were already working, as they said, on a low-rate basis. When this was cut, they argued that six hours, which they were allocated as a result of legal aid, couldn't produce any decent results.

Recommendation 5: The corporation is required to ensure that the provision of family law services is granted equal or greater priority than the provision of criminal law services. This is part III, subsection 13(1) on the first reading of the bill.

We have nothing against legal aid provisions for criminal cases. What we have found is, the amount of money which is taken by the criminal law is far, far greater than the family law, and yet when the cuts were arranged, the family law was hit by far the hardest. What we would like to see in future is that this will not happen. I think we know why it happened and I will speak to that a little bit later.

Recommendation 6: The corporation is required to provide legal aid services that are of a comparable quality to those available privately. In practice this means that legal aid clients should have access to the same pool of lawyers and other legal service-providers as non-legal-aid clients.

We know what happens. We have lots of women who have been married for 23 years, their children are grown up, and suddenly they divorce. This woman has no record in the labour market, she has no personal financial investments because this was handled by her husband, and suddenly she requires a lawyer. The husband is still in the workplace, often with a high income. He will go and hire the best possible lawyer for his money, and this woman is scrambling to match that with legal aid. It's not possible. It's very hard. As a result, the initial impoverishment which happens soon after separation continues right to the end of her life. We strongly recommend that this should not happen. Just because of the occurrence of separation, this woman should not end up hard up and on the welfare line.

Recommendation 8: The corporation is required to ensure that all family law cases eligible for legal aid be brought to finalization by legal aid. It's not to be withdrawn prior to the finalization of settlement. This is recommendation 8.

We have found in the past that when women engaged a lawyer and he felt the case was going to be harder than he expected and he was not going to get a legal aid certificate, then he just dropped the case and this woman had to scramble and either borrow money or just withdraw from the litigation altogether. This is part III, section 13 again. We put all this under section 13.

Recommendation 10: clear, explicit stipulation in Bill 68 of the means whereby the corporation must provide prompt and appropriate recourse for clients who have complaints concerning the legal aid services provided and/or the fee charged to them for those services, including an independent ombudsman to facilitate such recourse.

We applaud the notion of an independent corporation handling legal aid. However, we have a problem with the way the corporation is going to be run and the directors appointed. We do not say that the Attorney General shouldn't have a priority in appointing the directors; however, we are saying that there should be an independent ombudsman who will oversee any kind of changes in the corporation's services. Also, because as far as we are concerned we are the number one clients of the services, we would like a person to contact when we have a problem either with a lawyer or with legal aid. This has been very difficult in the past.

Recommendation 12: The corporation is required to use a management information system based on comprehensive statistical data collected by individual sub-areas of legal aid. This is clause 59(1)(f), page 31.

We have put this recommendation because when legal aid was cut in 1994, we argued vigorously, we made submissions to legal aid and all people possible about possible consequences of these cuts. They said, "Oh no, there is no problem," because according to the statistical data, the number of cases as far as family law was concerned and the money which was set aside for it was negligible.

I have a copy of the Ontario legal aid plan annual report, 1994, where they stipulated total fees and disbursements as far as legal certificates were concerned. They outlined, in civil law, uncontested divorce and contested divorce, and above that — I can make a submission to that — there is money set for criminal cases. By far, this is a pittance.

When we saw this, I contacted legal aid and I said to them, "Could you possibly tell me how many legal aid certificates were issued for women who were going to through separation and divorce?" They said to me, "We can't." I said, "Why not?" "Because we don't have a computer to compile the statistical data." I said, "How could you cut anything, how could you recommend finances for next year or the year after if you don't know how many certificates should be issued or not issued?" For that reason, we are putting recommendation 12, that there be a section for setting up an information bank, but we would like that information bank to be very comprehensive, with pertinent data relevant to the legal aid certificates by gender, not only by criminal or civil law.

That's my final submission.



**Dr Rosslyn Emmerson:** I would like to emphasize one of the points that Gabriela was making, that our real concern here is that by making explicit what areas of family law are covered, we want to be sure that people who are eligible for legal aid are going to be able to claim it. Our concern with the setting of priorities and budgets and delegating that, not making it explicit, is that what happens in reality is that these priorities are used to exclude people who are eligible for family law from receiving those services. So, perhaps if you fall into priority one or two, you have a chance of getting services; if you fall into priority class three or four, you don't. If it is the intention of the law to exclude people from getting family law services in those low priority areas, then that should be explicit as well. We should know what we're actually doing with this bill.

**The Chair:** Thanks very much. That allows us about a minute and a half per caucus. We begin with the third party.

**Mr Kormos:** It's not enough time. The area of family law has been probably the most brutally impacted by the restraints on the funding, by the caps on the funding, and the fact is that there are precious few lawyers in family law who want to or can carry a family litigation file on the limited number of hours they're allowed and so on.

1130

You heard what the member for Ottawa-Rideau had to say to the last participant, remember? Part of his comments were directed at you folks back there, where he was saying, "What would you rather have, a system where some refugee from outside of the country got priority over a woman seeking family law redress?" Let me just respond to that with you up here, because that's the sort of divide-and-conquer philosophy that doesn't do any of us any good.

Might I remind the member that many of those refugee claimants are women and children. Might I remind him and ask him to take a look at some of the affidavits that these women swear out and remind him what happens to women in those countries where they are fleeing political persecution, where they are being raped, where they are being assaulted, where husbands are disappearing in the middle of the night. I simply respond to the member, because his comments were very much directed at you, knowing that you were here, that we can't use divide-and-conquer. It's not a matter of saying that one is more important than the other. We have to find ways of equitably ensuring that all persons who need legal services, be it refugee services, be it family litigation, be it criminal law, are provided them.

**Dr Emmerson:** I would tend to agree with that. The aim here is that people who are eligible for receiving legal aid should be getting it and shouldn't be excluded on the grounds of priority.

**The Chair:** We now move to the government members.

**Mr Guzzo:** Thank you for your presentation, and for the work you have done here. If I could pick up on that point, in my 30 years at the bar, some years exclusively on

family law but always involved, I say to you that your organization is not well known. Your work is, and it's appreciated and I commend you for it.

With regard to the point that my friend Mr Kormos raises, I'm sure you noticed that Mr Hall picked up on the message. It wasn't a matter of "Divide and conquer." I don't deny that some of the affidavits filed in refugee cases are by women representing children and are extremely disturbing, but the fact is that it is a federal responsibility and we're taking provincial dollars here, a large percentage of provincial dollars, and applying it to those, at the expense of taxpaying people, particularly in the area of family law. We have a problem with the criminal law because we have a Constitution in this country, we have a Charter of Rights, and because of that we're obligated.

I'm somewhat perturbed at the number of practising lawyers who are not aware of your organization, even those who are in the field and do matrimonial law. I would also be remiss if I didn't point out, and this was obvious to me in my years on the bench, the number of senior counsel who do matrimonial law in this area, in this city, and who do a large proportion of legal aid work is encouraging. Some of the most senior people continue to do a percentage of their practice and take legal aid certificates. I think that speaks well of the profession.

**Ms Bronec:** Yes, it's true, we are not very well known, for two reasons. One is that we have to mind certain security provisions. No one can provide security for us. The other is that, like most of our clients, we don't have money and we have to weigh, are we going to collect money or are we going to concentrate on work? We are independently funded, so for that reason we work with all levels of government, or try to. We are very inclusive as far as services and everyone knows that.

**The Chair:** We now move to the official opposition.

**Ms Castrilli:** Thank you very much for coming here. I want to respond to my friend Mr Guzzo across the way to say that the charter, under section 15, guarantees equality to women. It doesn't say, "unless the Criminal Code takes priority." What we're talking about is justice for women and that's really what you're here about.

You asked some very interesting questions, and I don't know if you've had a chance to look at the McCamus report on legal aid but it answers part of your question. In fiscal year 1993-94, prior to this government coming to power, there were some 65,691 family law certificates issued, and they covered a wide variety of areas in family law. In 1996-97, the plan was granted the ability to issue 29,000 but they in fact only issued 14,000, and they were only priority one. Those are pretty shocking figures as to what's happening. As you know, some services were eliminated altogether. On top of that, they put a maximum on the amount of hours that could be spent in the service of family law, from a maximum of 15 hours to 6.5 hours. Anybody who practises in family law knows that 6.5 hours doesn't get you very far at all. It doesn't even get you to negotiate an agreement, let alone if you have to go to court. There are some provisions for extending that, but

it's only in the exceptional circumstance. So there's a huge problem here.

I want to thank you for the recommendations you made because I think they highlight a very serious problem of equality and access to justice.

**The Chair:** Thank you very much for coming forward today. We very much appreciate that.

**Mr Martiniuk:** This might possibly be an opportune time, while the next presenters are coming up to the table. Ms Castrilli asked a question of me and of the ministry as to whether any certificates under the present and old system had been issued to paralegals and, if so, how many. The answer is that we are not aware of any certificates ever being issued to paralegals.

**Ms Castrilli:** So the Attorney General was mistaken.

**Mr Martiniuk:** I'm not aware of his statement, so I don't know.

**Ms Castrilli:** Very well.

#### DEFENCE COUNSEL ASSOCIATION OF OTTAWA

**The Chair:** We call on our next presenters, the representatives of the Defence Counsel Association of Ottawa. If you could identify yourselves for Hansard, we would appreciate it. You may begin.

**Mr Norman Boxall:** Thank you. My name is Norman Boxall. I'm here as president of the Defence Counsel Association of Ottawa-Carleton, which is a group of lawyers who practise primarily criminal law in the courts in this region. With me today is Lawrence Greenspon, the first vice-president of that organization.

We've had an opportunity to look at the act. I provided you all with some written material which briefly outlines some of our concerns, but what I was going to address orally may not be exactly the same as what's in writing, and what's in writing can be left with you.

In looking at the act, and you're at this stage of considering the act, one must be cognizant of the fact that there are a great number of acts that have sections in them which sound great, but it's the application of the act that's important. This act allows for a tremendous amount of determination by regulation and future application. Without knowing what the regulations are or who's administering the act in the future, it's hard to determine the exact focus it will take. So there will be very important determinations made at the regulation stage in the implementation of them.

In looking at any act dealing with legal aid, I think it's absolutely critical that one must consider what the goal is: What is the purpose of the act? What are we trying to do? As a minimum, from a criminal lawyer's perspective, it should be that there be equal access to justice and that the quality of one's defence is not determined by the size of one's bank account. It's absolutely critical that the public have faith in the system. It's absolutely critical that the system work. It cannot be appropriate that it is in practice, and a view, that if you're wealthier you have a better defence.

I appreciate that in any public program, the government will always have concerns about cost and what they can afford, but it's absolutely critical, in my submission, that when low-income persons are appearing in criminal court, this isn't a private matter. This isn't a matter that they're choosing to be in court. The government has them in court. They're presumed innocent. We know, of course, of certain high-profile cases, and there are probably lots of others that aren't high-profile, where persons are wrongly convicted. These persons are presumed innocent, and as best the government can do it with funding and as best the Legal Aid Act can allow, they must be given a defence that's equal to that of someone who's wealthier. If they're not, there are other costs to the system beyond what is paid out in legal aid dollars.

One of the great concerns I have is measuring cost. Do we just measure the cost by how much we pay in any given budget? When we do that, we run into problems. We operate in the federal system. There's money from the federal government, the provincial government and municipal government, and all of them are involved in one way or another with criminal law, whether it's municipally with respect to police and services, whether it's federally with respect to certain legislation, whether it's provincially largely in the administration.

1140

If we just focus on any one particular budget, we sometimes lose track of the fact that there's only one taxpayer. We may save some money on legal aid if we do something here, but it costs us more perhaps in policing costs. One must take a look at the total cost and one cannot lose sight, in my submission, of the cost to society as a whole if legal aid is viewed as second-class or if persons who have legal aid counsel are not being given an equal defence.

We only need to look south of our border to see the consequences of jurisdictions where there's a prevailing view, if not in fact, that if persons don't have the means, they are not adequately represented. In my submission it's critical in the act, and in the implementation of this act with the regulations, that there continue to be sufficient funding and that the focus should be on ensuring that low-income persons charged with crimes are represented by persons of the same calibre and experience as persons who have more money.

A concern that we have also with respect to the various studies that have come forward is with different delivery models. Obviously, when the new body is set up, there is going to be consideration as to whether the services can be delivered as effectively and perhaps less expensively with a different model. Primarily in the criminal law system, we've had a system of *judicare*. Simply put, it means that a person who qualifies for legal aid financially has a choice of lawyers. They're not assigned a lawyer; they can choose among any member of the bar who is prepared to take it. Thankfully, for many years, many qualified and experienced lawyers are on that panel. You cannot tell when you're in court whether the lawyer is privately



retained or whether he's on a legal aid matter in many cases, and that's the way it should be.

A concern we have is the suggestion that maybe cases could be blocked off and sold to the lowest bidder where a person would agree to take a block of cases and persons accused of crimes would be auctioned off. The potential for abuse there is obvious.

We're concerned about the suggestion that comes out of the McCamus report of the increased use of duty counsel beyond, in my submission, what they're capable of. It's a very interesting dichotomy between what McCamus tells us should be done in the defence of accused persons and what we see being suggested in the prosecution. In all the inquiries and studies with respect to the prosecution, it's made clear that at the earliest stage it should be very experienced crown attorneys making decisions and screening the cases, whereas in the defence, McCamus is suggesting that we use the least experienced, that we have duty counsel who have huge burdens screening cases and making the initial determinations.

Just as with respect to the crown attorney's office — and they're finding out with respect to costs and other costs — having experienced people at the front end saves you money; it doesn't cost you money. Bigger expenses result when you have inexperienced people or people who don't have the time and resources to make the decision that should be made at the early stage. So we have concerns there.

We also have concerns with regard to the potential under the act that non-lawyer service providers, whatever that might be, could be issued certificates. Our submission is very strongly that whatever that might be, in other areas of law with respect to criminal representation, with respect to appearing in court where persons face the possibility of incarceration, where the implications of a criminal record are in many cases devastating with respect to employment or future prospects — those consequences last a lifetime — those persons cannot be and should not be represented by non-lawyer service providers.

In addition, there sometimes seems to be a debate between "What can we afford?" and "How much is this system that you're proposing?" and "If we have that, it's going to be too expensive." But it's important to keep in mind that, as we see in almost all other areas of government, just because it's done by the government or it's done by staff people in the government, that doesn't make it cheaper or better. In many other areas we're attempting to privatize systems, and yet in the defence of accused persons there's the suggestion that maybe we should take some of it away from the private bar and create some bureaucracy.

Whatever the projections are about cost by implementing government agencies to do the work that's largely being done in the private sector now, I can tell you this: Any projection for what it will cost the government to do it is low. We know that. It's been true in every other area and it will be true with respect to legal aid also, and the costs will only continue to increase as the bureaucracy increases.

The private system particularly in criminal law is absolutely critical that it be maintained and that we continue to have services offered by lawyers who are not government employees, not employees of legal aid, who are independent, who can stand up in court and represent their clients fearlessly and without concern as to their employment situation.

Another concern we have is with respect to sections of the act that change the governing body. There is no doubt that there can be some valid criticisms made of the law society. In fact, many lawyers wanted the control of legal aid taken away from the Law Society of Upper Canada and given to this new corporation. However, in my submission it is part of a sentiment that lawyers somehow are not capable or are looking out for themselves or some sort of anti-lawyer sentiment. I notice that the act statutorily recognizes that a majority of the board must be non-lawyer. Why? This seems to me to be rather odd. I don't know any other area where we would statutorily put in that the majority has to be not of some particular training.

If one thinks that merely by changing the governing body from a majority of lawyers to a majority of non-lawyers, it will improve the situation, they're mistaken. The underlying problems will still be there. Non-lawyers have a lot to offer, true with respect to administration and so on, but lawyers have a lot to offer too. I have very great concern about expressing in a statute that the majority must not be of any particular profession. Surely the persons who are most qualified, regardless of their profession, should be those who are on the board. If the government chooses to appoint non-lawyers, so be it, but to put it in the act, in my submission, is wrong.

The budget indicated in the act will remain the same for the next three years as it is for this year. It must be remembered, if that's being considered, that the budget this year is substantially less than it was five years ago. It's a bare minimum amount. The amount of services being conducted under that current budget are minimal. In fact, there should be an expansion of services. In freezing the budget for three years, it gives some stability to the new legal aid corporation. However, legal aid is not an agency, no matter whether the law society controls it or a corporation, that can determine in advance what its needs will be. It depends on demand. If a recession should reoccur, and there are lots of economists forecasting it when I read the paper, we know there will be an increased demand for legal aid. If the new legal aid corporation is stuck with a budget that was based on a time of relative prosperity and the demand goes up, they will be saddled with the same problems. There should be provision in the act to allow for increased budget in times of increased need.

In the criminal law context, not only is the economy a factor in the number of cases that need it, the government also has a large control of how many cases there are. New government initiatives in the areas of driving offences, in domestic assaults, there are legitimate purposes for all of these. However, it must be understood, as it clearly is

because the government is increasing the complement of judges, increasing the complement of crown attorneys as a result of some of this legislation, that there will be increasing demands on legal aid. If the legal aid budget is frozen, it's not going to be enough. There has to be provision to allow it to be expanded in times of need.

In conclusion, regardless of the best of legislation or the best of intentions, the proof of this act will be in the regulation and its implementation and whether or not this government and subsequent governments are really committed to ensuring that low-income Ontarians have access to justice and whether they're prepared to fund it. It must be funded.

That's essentially what I wanted to say. Mr Greenspon may have a couple of comments also.

1150

**Mr Lawrence Greenspon:** I just have a couple of comments and I will keep them brief, because I would prefer that we try and answer your questions. If we can be of any assistance to the committee, we'd like to do so.

What you're being asked to do is very popular; let's face it. You stick it to the criminal lawyers, you stick it to the criminals, people who are portrayed as criminals, and everybody is going to love you. It's great stuff. Politically, you can't lose. But the problem is that in doing that, if you're tempted by doing that — and undoubtedly you'd be foolish if you weren't tempted to do it — two things are going to happen. Number one, while we study the Morin commission recommendations, and Milgaard and Marshall and others that will follow, the number of people who are wrongfully convicted because their counsel did not have sufficient resources to access the evidence, to show that they were truly innocent, those numbers of wrongful convictions are going to increase. The harder you squeeze the defence lawyers and the people they represent, the more likely that people are going to be wrongfully convicted, and it has already started to happen as a result of the last round of cuts. There are more and more people appearing in courts who have defences to charges who are pleading guilty because they're offered sweetheart deals and they have no counsel. So it has already started to happen.

The other thing is much broader and it's something I know we can all relate to: that the measure of our democracy, the measure of our society is how we treat the marginalized citizens of our community, how we treat the poor, how we treat the people who really need counsel in these situations where the state is facing them, and how we treat those people is a measure of our democracy. I ask you to keep that very broad and important principle, put that first, and put what may be attractive politically to the back. Thank you very much.

**The Chair:** That leaves a minute and a half per caucus. We begin with the government members.

**Mr Guzzo:** Gentlemen, thank you very much for being here. Mr Boxall, with regard to non-lawyer boards, just let me tell you that if you ask that question often enough, you're going to get responses of other suggestions, like the

Senate, the House of Commons and the Ontario Legislature.

If I could address my question to you, Lawrence, because when I look at your letterhead, your name jumps out because you may be the only one here who does other than criminal defence work. You also handle matrimonial files as well as civil cases from time to time, and quite capably, I might add, and also on occasion immigration law. Am I right?

**Mr Greenspon:** I do David-and-Goliath work. I don't do a lot of family and immigration but I do civil and I'm usually on for the little guy.

**Mr Guzzo:** My position that I've enunciated here this morning, and often at caucus, but with the same reaction that I got from my friend Mr Kormos, is that since I'm spending Ontario government tax dollars, I am of the opinion that I shouldn't be spending \$1 on a refugee person, a person who is a non-citizen, who has not paid taxes in Ontario, prior to looking after —

**Mr Kormos:** He's not being helpful, is he?

**Mr Greenspon:** I don't mean to cut you short, but we've got limited time. I can't answer for the immigration bar. I really think they should be before you. I don't do immigration work, to answer that question, but in fairness to you, it's a point and I'm not the person to try and answer it for you, unfortunately.

**The Chair:** We move to the official opposition.

**Mr Patten:** Gentlemen, it's good to see you here this morning. I appreciate your comments and I think you've cut to the chase of the overall issues.

I would make one exception. While I agree with the principle, in terms of the board, that there needs to be a balance, obviously there needs to be significant representation from the outside community, because I think that can carry to the board a dimension of perspectives that would be valuable.

You asked the question, were there other boards? The Ontario College of Teachers, for example, there was a big debate as to whether the teachers would have the majority of representatives on that particular board and they lost the day on it. I just throw out one example.

One question I'd like to ask that is stimulated by Mr Greenspon's comments is, what kinds of incentives other than the perpetual clamouring for resources might there be to engage law firms and reputable organizations in the legal field to participate, in the best sense of making a contribution to the community? Are there other things that need to be looked at?

**Mr Greenspon:** You mean from the criminal defence bar?

**Mr Patten:** I'm thinking in terms of whether there may be recognition to have the participation of firms, or lawyers themselves, to get involved in, as you say, representing those who have the least amount of resources.

**Mr Greenspon:** I'll give you an example of something that happens here in Ottawa. We have right now over 250 lawyers — that's over 25% of one profession — who have volunteered to work with the REACH organization that works with the disabled. There is no profession — I



put it on the record, I challenge the teachers, the engineers, the architects, the doctors, any one of them — that is as involved and gets more involved and gives more of their time and expertise. There's no profession in this province that gives more than the lawyers and there's no profession that gets dumped on more.

What can you do to get lawyers more involved? I simply don't know. You know through your work in the community. The first thing we do, "Let's get the lawyers," and they're there; we're there and helping. The legal aid system is another way that criminal lawyers are giving, because when the bill comes out and they're allowed six hours, do you think they stop at six hours? They do 10, 12 and 14 hours on that case because they care.

**The Chair:** Thank you. We now move to the third party.

**Mr Kormos:** Thank you kindly. I appreciate your input. I just want to refer to page 6, your comments on the budget, and issue what my colleague might call a caveat emptor. The fact is that the bill only provides in a statutory way guaranteed funding for three years for the clinic funding and for two years for the immigration refugee law funding. It doesn't have any statutory guarantee of global funding for the upcoming three years. In fact, all we've got is the Attorney General's promise. I don't purport to speak for you or, quite frankly, any other member of the bar, but after what the Attorney General did and said about the family support plan, I have a hard time believing him when he says something, when he makes a commitment.

What bothers me is that the government would, in subsections 65(5) and (6) respectively, statutorily guarantee stable funding for clinic programs for three years and statutorily guarantee stable funding for refugee law for two years, knowing full well it's going to get right out of the business of refugee law at the end of the two years because it's not mentioned anywhere else in terms of the mandate. That means that when there are cuts, the cuts are going to come first in the certificate programs, even though the bill also says it recognizes that the foundation for the supply or the provision of criminal and family services comes via the private members of the bar.

This bill, by the absence of its statutory guarantee of global funding on a stable basis, is the forewarning of a direct defunding of criminal and family services. When you look at what's there and what isn't there, the inevitable and irresistible conclusion is that criminal and family funding are going to be out the window. The only thing that's guaranteed is clinic funding.

**Mr Boxall:** That's an excellent point. Given that the bill comes from the department of the minister who has made the promise, one can only hope that he keeps the promise and proves it by putting it in the act.

**The Chair:** Thank you very much for coming forward with your presentation. We very much appreciate that.

**Mr Boxall:** Thank you for the opportunity.

**The Chair:** This committee will recess until 1220 or until the last presenter arrives.

*The committee recessed from 1200 to 1208.*

## NATIONAL ASSOCIATION OF WOMEN AND THE LAW

**The Chair:** At this time I'll call upon our last presenter of today. If the representative of the National Association of Women and the Law could come forward, and identify yourself just prior to Hansard beginning. Thank you for coming. Just before you begin, yes, Mr Patten.

**Mr Patten:** There was another presenter.

**The Chair:** They've cancelled.

**Mr Patten:** All right.

**The Chair:** You may begin. Thank you.

**Ms Lisa Addario:** Thank you, Mr Chair. My name is Lisa Addario, and I'm representing the National Association of Women and the Law.

The National Association of Women and the Law is a national organization that works to promote the legal equality rights of women. We do so through research, public education and our advocacy law reform efforts. The membership of NAWL includes lawyers, law professors, law students and a variety of other individuals from a number of constituencies in our society, but the common ground that all of our members share is their interest in supporting an active pursuit of women's equality. Since its inception in 1975, NAWL has appeared before numerous standing committees at the federal and provincial level, task forces and royal commissions to advocate on such matters as violence against women, income security issues, custody and access, health law, the intersection of race, gender and the law, and criminal law.

I thank the committee for hearing from our association today on this very important matter. For the last four years, NAWL has taken an active interest in the matter of access to the justice system for women and its inextricable link to legal aid. As a first principle, I would like to share with the committee that the legal aid system in Ontario, which was created in 1965, was the first of its kind in Canada and was established to rationalize a system that would provide low-income people with access to the justice system. In other words, legal aid was devised to prevent the evolution of a two-tiered system of justice, one for those who could pay and another for those who couldn't.

Now legal aid is at the crossroads and this committee is charged with overseeing the review of a bill which would reform legal aid services in Ontario. From reading the bill, it is clear that the legislation is designed with the companion goals of efficiency and quality of service in mind. Our association submits that although we must all be mindful as architects of a new legal aid scheme of the need and the desire to be fiscally conservative, a new legal aid scheme must also respond to and meet the legal needs of various segments of the public. It is our position, therefore, that the delivery of legal aid services in Ontario would benefit from a principled approach, and by that I mean one that takes into account the equality entitlements under the Canadian Charter of Rights and Freedoms.

With the remainder of my time I wish to focus on the importance of identifying and responding to the legal

needs of women in particular as a diverse and distinct clientele of legal aid services. I say this because I believe it's impossible to devise an effective service without first taking into account women as a distinct constituency. I also say this bearing in mind the goal of efficiency, that good governance would suggest that legal aid services must respond to the demographic requirements of the clientele.

I'll give you an example: According to the National Council of Welfare, women are the poorer of the poor in our country, which is to say they make up the majority of poor people in our country, and older women are among the poorest of this subset. This would suggest a clear need for legal aid services that meet the needs of this group of clients, yet the current scheme of legal aid services in Ontario does not recognize or particularly respond to this constituency. The point is that old women don't need legal aid for custody and access, yet that is where the priority of the previous system of legal aid lay.

The legal problems of older women most often involve issues arising from decisions made on their behalf, either from the exercise of powers of attorney or arising from decisions pertaining to their health care. Older women also require legal information and advice to assist them in exercising their rights in respect of their tenancies at residential care services, their entitlements to long-term care in hospitals and to community care and, in the case of financial abuse, they require representation to recover property and finances that have been taken from them by individuals exercising their powers of attorney in an abusive and illegal manner.

There are other constituencies of women for whom it is neither practical nor culturally appropriate to leave a marriage and for whom custody and access coverage is similarly irrelevant. For many low-income women, particularly those who are in abusive relationships, legal aid services which would permit them to assume greater economic independence would be more useful. Legal aid for wrongful dismissal actions, for example, and to appeal decisions pertaining to eligibility for employment insurance, would be particularly meaningful.

For a large segment of our society, given that women's traditional role has been as unwaged workers and given their historical reality as the poorer of the poor, there is a need for widespread and easily accessible coverage for poverty-related legal problems such as social assistance appeals, landlord and tenant matters, workers' compensation matters and pension benefit entitlements. The discretion that has been given to the committee under this scheme is too broad to ensure that there is absolute coverage. What I'm advocating for is a minimum standard of entitlement for these kinds of matters.

These are the kinds of suggestions that lead us to recommend that a commission appointed under the new legal aid scheme should undertake extensive consultation to assess women's needs for legal aid services. I also recall that one of the background papers to the Ontario Legal Aid Review suggested the same thing. That was a background paper by Professor William Bogart, who

identified that the legal aid needs of women as a clientele were very poorly understood at the time of his review. He also made the recommendation that there be extensive study undertaken before any new legal aid scheme was put into place.

The process of granting legal aid certificates should be more transparent. This province should collect and publish data pertaining to legal aid usage, the number of applications and the number of applications rejected, disaggregated on the basis of sex.

The province should also collect and publish data regarding the legal outcomes of cases in which the litigants are unrepresented to assess the effect of legal aid cutbacks. I believe this is particularly important given the provision in clause 14(1)(i), which includes, as a method of providing legal aid services, assistance to individuals representing themselves, including the provision of summary advice, assistance in preparing documents, information packages and self-help kits. I believe there is a place for this type of assistance, but at this point I don't believe it should extend any further than the realm of public legal education and outreach.

I believe it's incumbent on this government to undertake research on the effectiveness of such self-representation strategies before it proposes them as an alternative to legal representation. Self-help strategies would not be appropriate, for example, in cases in which the state is the opposing party and represented by counsel, as in the case of child apprehension cases and social assistance denials; nor would it be appropriate in cases where complex matters are at issue, as in the case of pension credit splitting on marriage breakdown, or in matters where expert evidence is being given. The complexity of the matters should be decided from the perspective of the client.

I think this committee will understand my point that introducing such a scheme without knowing what the consequences are for unrepresented litigants would violate principles of fundamental justice. What is critical in adversarial proceedings is that both parties are effectively represented and have the opportunity to participate in, not merely observe, what is taking place in the proceeding. This is the principle to which I submit this committee should give priority.

Quality of service requires equality before the law and in accordance with the principles of fundamental justice under the charter. Although the legislation that you're charged with overseeing cites the need for efficiency as well as equality, only equality has been elevated to the status of constitutional recognition.

With the remainder of my comments, I would like to address matters pertaining to accessibility of legal aid, financial eligibility and quality of service. I make these comments to support the recommendation that a preamble should be added to section 12 of the legislation, requiring the committee to take account of the need for improved accessibility, greater flexibility regarding determinations about financial eligibility and the need to improve quality of service.



This is what I base my comments on. In 1997, on behalf of the National Association of Women and the Law, I held focus groups with women in Toronto and in Manitoba to assess their experience with legal aid services from a perspective that took the diversity of their life experiences into account. What I mean by that is that I held focus groups in both provinces, in Toronto and throughout Manitoba, based on particular recognized constituencies of women: in Manitoba, for example, with urban aboriginal women, with single moms on social assistance and with rural women; in Toronto, I held focus groups with refugee and immigrant women, with older women living in poverty and with women who had experienced abuse. We asked women about their experiences with the accessibility of legal aid, financial eligibility and coverage criteria and the quality of the service they received.

What I'm going to present to you is an amalgam of the comments and the conclusions we drew from women in both provinces. Obviously, the women who spoke in Toronto have direct relevance, but I believe that the women who spoke in Manitoba have relevance too, because Manitoba is seen as having one of the most innovative legal aid schemes in the country, often held out as an example of where other legal aid schemes should go. I want this committee to be mindful of the fact that although certain of the comments that women make come from Manitoba, they have relevance to what pitfalls might lie ahead.

1220

The data we compiled confirmed that many of the women found the process of applying for legal aid quite confusing. For example, women did not understand the criteria used to assess their application for legal aid, and for some women, the feelings of discomfort that can accompany this experience can be insurmountable. This is what one woman said:

"Well, the legal aid lawyer comes in once a week. I asked if I could see him," and they said, 'What for?' I said, 'Well, it's concerning a driver's licence fine,' and they said, 'He doesn't deal with fine option in stuff like that.' I misunderstood her and said that was what it was for, but she didn't tell me I could come in and apply anyway or just talk to him about some kind of advice. At the time, I also wanted to get support from my baby's father and some kind of an agreement or something, but after I was turned down, I was hesitant to go again because I didn't want to be turned down again."

Another woman who had been refused legal aid four times for a refugee claim needed a lawyer just to persuade legal aid personnel of the strength of her claim. She said to us, "The lawyer worked on legal issues I didn't even know, so I guess that was the problem I had in the beginning. If I knew those legal issues, I could have told him, but she talked with me for a long time and I knew then that this case was a case that was good enough to win, but she said: 'Well, you didn't tell them. If we had known this, this and this, I don't think they would have turned you down.'"

The low tariff paid to family law lawyers who take legal aid certificates has also made the practice of serving legal aid clientele financially problematic. This means that many women cannot access legal counsel who are trained to understand and deal with the complexities and dynamics of abuse and are able to serve the abused client. Other women may not be able to find a lawyer who will take legal aid clients. In Ontario, many family law lawyers have stated that they can no longer meet their professional obligations to provide the best legal aid service possible within the unreasonable confines of reduced tariff limits. Not surprisingly, the result is a reduction in the number of family law lawyers willing to take legal aid certificates. Rural women found this to be a particular problem. They reported that most lawyers in smaller towns had stopped accepting legal aid cases, since it was not financially worthwhile.

Turning to the matter of coverage and financial eligibility, women in our study reported that the denial of coverage for certain legal problems severely hampered their ability to resolve their problems effectively. They identified considerable overlap in the personal, social and legal aspects of their problems, yet encountered bizarre and frustrating constraints on their ability to access legal aid for their legal matters. This is what one woman told us:

"One of the times I was asking for legal aid was for my furniture. I left in the night with nothing and I went to a shelter, and when I went back to the house he had stolen all the furniture out of the house and burned whatever he couldn't take, in the apartment, on the floor. And then when I had asked, I didn't have anywhere to live, I had no furniture, I had nothing, and legal aid just said, you know, they didn't take legal aid for personal stuff."

According to the 1997 annual report of the Ontario legal aid plan, the dramatic reductions in legal aid certificates have been devastating. To quote:

"The human cost of this decline in legal aid certificates has been staggering. People are going unrepresented in court in criminal and family law, they are now unrepresented in the preparation of complicated documents, and these unrepresented people in family law are predominantly women."

This committee has the opportunity to correct what has devolved about legal aid in Ontario, and certain of the recommendations that we're making to ensure some minimum standards around coverage and financial eligibility would correct this kind of situation.

Many women in our focus groups were not on social assistance when they tried to access legal aid; they were either working outside the home in low-paying jobs or working inside the home where there may have been joint assets in the marriage, but they didn't meet the financial criteria set by legal aid. Nonetheless, they found themselves unable to meet the financial demands of hiring private lawyers.

Women in our focus groups also indicated that the choices they were required to make as a result of their financial hardship essentially forced them into poverty to

protect themselves and their children. What one woman said to us was: "I tried not to use legal aid, and many women knew it. Like, I even had no heat in my house. I was surviving and lots and lots of people knew it, social workers and different people, but you know, I was trying to pay for it myself. I was trying to survive and pay for it myself. That's what I was trying to do, and I did that until they cleaned me out."

With respect to the quality of service, women were asked about their perceptions of the quality of service they received. I want to be clear: Some women clearly had positive experiences with their lawyers and they felt tremendous relief when they received a lawyer. One woman in particular was facing an order to have her children apprehended and obtained a lawyer at the 11th hour.

The importance of training legal aid personnel to be respectful and to give a client's application full consideration was a major theme in our focus groups. Some participants found that legal aid personnel assessed their eligibility rather summarily. One legal aid personnel said to an applicant: "He basically told me right away they weren't even going to bother looking at my application, because what he said was: 'Well, I can see that you're dressed pretty well. Why are you applying for legal aid? You don't look to be the type to need legal aid, you know.'" The woman said: "That was really rude and ignorant because I had just left my husband. I didn't have the house, he had both vehicles, and I didn't have anything."

Abused women have been perceived by those offering legal aid services to be needy or difficult clients. The women in our focus groups in both provinces described the extent to which the relationship with their lawyers can be dysfunctional and outright abusive.

One paralegal who participated in our focus group observed: "Being yelled at by your lawyer is common. It seems a very common thing. You get insulted, put down and yelled at. Now, I'm not saying that all lawyers do this, but I have noted that it's a lot higher than I ever thought it would get."

Women were clear about what legal aid provided them. "Without legal aid, I wouldn't be here to tell my story now. It's a blessing to get legal aid because from then on, when my lawyer took it on, things moved faster. I actually got the decision on the same day, in less than three hours, because the board was able to hear me out."

At the same time, though, women had such negative experiences with the justice system and were so unable to cope that they felt they would have been better off if there were alternative solutions. What one woman said to us was, "I want to tell you that most older women don't know when they're being abused, but the second thing is that when I lived for 14 years with all of the lawyers and the legal aid and the running to court and the whole bit they

have you going in, what I was unable to do was nurture my children."

What I would also suggest to the committee is that what that person would be unable to do is represent herself effectively. Bearing that in mind, I have great concern about the prospect of self-help kits and self-representation being a viable alternative for people who need to represent themselves in court.

**The Chair:** Just so you know, you have less than a minute remaining.

**Ms Addario:** Let me proceed to the summary of principles, then, that I would like to see as a minimum standard incorporated into this bill.

The process of determining legal aid applications needs to be transparent.

The recommendation from the Canadian Bar Association for the creation of a national civil legal aid tariff should be implemented.

Legal aid personnel should monitor the ability in all communities, rural as well as urban, to access their lawyers.

Women's legal aid needs should be addressed by services that don't arbitrarily divide up their life experiences. For example, women who are fleeing abusive relationships require legal aid to be able to recover their property.

Legal aid administrators responsible for assessing financial eligibility should take into account that women have only nominal ownership of assets in some cases, and if financial abuse is present, women are not likely to have access to those assets at all.

Lawyers and legal aid personnel should receive training to provide more effective, sensitive service to the diverse communities of women, including abused women, multicultural communities and women with disabilities.

The final point I would like to make — and with the committee's indulgence, I'll probably take a minute more than what you've given me — is that I note that there's no definition for "family law" in the legislation. I would urge this committee to give "family law" a definition that is as broad as possible to be able to provide the numbers of low-income women in our society with legal representation.

Finally, the definition of "clinic law" does not include law reform efforts, and it's only from the law reform efforts in our community that we've had the legal aid system that has been considered to be the finest in North America. I'd like to encourage the committee to include a definition that includes law reform efforts.

**The Chair:** Thank you very much for your presentation. We very much appreciate your coming forward today.

Just so the committee knows, prior to rising today, the committee begins at 10:20 tomorrow morning. With that, this committee rises until tomorrow morning in Toronto.

*The committee adjourned at 1230.*



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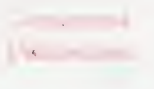
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Second Session, 36<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Deuxième session, 36<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 19 November 1998

# **Journal des débats (Hansard)**

Jeudi 19 novembre 1998

## **Standing committee on administration of justice**

Legal Aid Services Act, 1998

## **Comité permanent de l'administration de la justice**

Loi de 1998 sur les services  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Thursday 19 November 1998

*The committee met at 1032 in room 151.*

## LEGAL AID SERVICES ACT, 1998

## LOI DE 1998

## SUR LES SERVICES D'AIDE JURIDIQUE

Consideration of Bill 68, An Act to incorporate Legal Aid Ontario and to create the framework for the provision of legal aid services in Ontario, to amend the Legal Aid Act and to make consequential amendments to other Acts /  
Projet de loi 68, Loi constituant en personne morale Aide juridique Ontario, établissant le cadre de la prestation des services d'aide juridique en Ontario, modifiant la Loi sur l'aide juridique et apportant des modifications corrélatives à d'autres lois.

**The Chair (Mr Jerry J. Ouellette):** We call this committee to order today on the last day of hearings here in Toronto of the standing committee on administration of justice discussing Bill 68, the Legal Aid Services Act.

Prior to hearing from our first presenters this morning, I would like to bring forward the information that's been distributed regarding the issue the official opposition brought forward, the issuing of permits for the use of paralegals. The information just follows up the verification of the parliamentary assistant's comments regarding that.

**Mr Peter Kormos (Welland-Thorold):** On a point of order, please, Mr Chair: I note there's been a substitution slip or notice provided substituting Jim Brown for Mr Rollins. Mr Brown isn't here yet. I'm wondering if we could perhaps wait for Mr Brown to come in view of the fact that he's a substitute —

**The Chair:** No, we have presenters here, Mr Kormos, and I don't think we'll keep them waiting any longer.

**Mr Kormos:** Mr Chair, if I may. I am prepared to sit through lunchtime to accommodate the presenters. It's not fair to Mr Brown, who as we know is very active in the community, has some considerable insights into the activities in this community involving various legal matters. He expressed them recently. I think it's unfair to Mr Brown for us not to wait until he at least comes here.

**The Chair:** We have no detailed information as to his whereabouts. Should something occur on the way here, if he is in a car accident or something, I have no intention of determining that we will wait. We will continue.

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Jeudi 19 novembre 1998

**Mr Kormos:** At least we know the Santa Claus parade isn't on today, so we know he's not there.

**Ms Annamarie Castrilli (Downsview):** Mr Chair, before the presenters come forward, perhaps I could ask you about the status of the other request we made with respect to convention and treaty obligations and charter obligations with respect to refugee laws.

**Mr Avrum Fenson:** That'll be here early this afternoon.

**Ms Castrilli:** Thank you very much.

CANADIAN ENVIRONMENTAL LAW  
ASSOCIATION

**The Chair:** I call the Canadian Environmental Law Association, if you could come forward, please. There's a total time allocated of 20 minutes. At the conclusion of any presentation you may have, your time is divided equally between the three caucuses for questions and answers. Just before beginning, if you could identify yourselves for Hansard, we would appreciate it. Thank you for coming.

**Ms Cathy Spoel:** My name is Cathy Spoel. I am the chair of the board of the Canadian Environmental Law Association. Graham Rempe is one of our board members and a former president of the association. Grace Patterson is a board member and the treasurer of the association this year. Paul Muldoon is the executive director of the clinic. I will be starting our formal presentation and Ms Patterson will participate. We're all here in the event there are questions following that.

The Canadian Environmental Law Association was founded in 1970 and has been funded and operated as a specialty legal aid clinic under the Ontario legal aid plan since 1978. As a specialty clinic within the clinic system, CELA represents poor individuals and non-profit, low-income citizens' organizations. CELA also provides public legal education regarding environmental law and law reform for the protection of human health and the environment and for increased access to justice for Ontario citizens.

CELA is generally supportive of Bill 68, the Legal Aid Services Act. CELA fully supports the submission of the Association of Community Legal Aid Clinics of Ontario, of which we are a member, which has been presented to this committee and, as such, our comments will not include comments outlined in that submission.



Our submission relates to one important issue which pertains to the absence of the term "environment" in the definition of "clinic law" in section 2 of the bill. Although the absence of the term does not impede CELA from carrying out its current mandate and work, either now or in the longer term, the inclusion of the term is fundamentally important since it would clarify and reaffirm the vital connection between poverty law and environmental issues.

To further this issue, it is necessary to provide some background to CELA and its work, to review the fact that "environment" is not expressly included in the definition of "clinic law," to give some further elaboration as to the link between environment and poverty law issues, and then we'll have a proposed amendment to present.

CELA is governed, as are all clinics in Ontario, by a volunteer board of directors. Our board includes lawyers, past chairs of provincial administrative tribunals and representatives of CELA's client community. We receive numerous requests for representation by eligible individuals, groups and families every month, and we accept as many of them as our resources permit.

We provide services to the public in many forms. In the year ending December 31, 1997, we directly served over 1,919 individuals with summary advice, brief services or referrals. We often assist individuals and groups on a self-help basis when we cannot assist by accepting the case for full representation. We assist our clients with a wide range of environmental issues. Matters under the Environmental Bill of Rights, proceedings before the Ontario Environmental Appeal Board, the Ontario Environmental Assessment Board, the Ontario Municipal Board and other tribunals. We also appear before the Ontario Court (General Division) on applications and actions, in the Federal Court and have appeared at appellate levels in the Ontario and Federal courts, including the Supreme Court of Canada.

In addition to the legal representation I've outlined, we also provide, as is our mandate, public legal education and training in environmental law to the general public and to other clinics, community outreach and law reform.

Bill 68, the Legal Aid Services Act, proposes to transfer legal aid services from the current Ontario legal aid plan system run by the Law Society of Upper Canada to a new corporation called Legal Aid Ontario. As noted, we have overall support for the bill. However, we have a concern about the definition of "clinic law." Clinic law is defined in section 2 as follows: "'clinic law' means the areas of law which particularly affect low-income individuals or disadvantaged communities, including legal matters related to,

"(a) housing and shelter, income maintenance, social assistance and other similar government programs, and

"(b) human rights, health, employment and education."

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Our concern is that clause (b) of the definition does not include the term "environment." Any reasonable interpretation of the proposed legislation suggests that these areas of law are not exhaustive but permissive in that other areas, such as environment, may be offered in addition to those areas listed. On this view the definition of "clinic

law" provides the minimum content, but does not constrain additional services.

Despite this view, a concern nevertheless remains for CELA in that environment is not included in the core clinic services definitions. Therefore, even though such services may now be offered, they are subject to modification over time. If a decision is made by Legal Aid Ontario at some date in the future to restrict its funding to those areas described in the "clinic law" definition on the basis that those areas are its core service delivery areas, then a specialty clinic dealing with any topic beyond those listed may be at risk.

Although we provide services in the areas listed in the definition of "clinic law," such as environmental health and human rights, reliance on those other terms to encompass the services required by CELA's clients would be inadequate, in our view.

**Ms Grace Patterson:** We submit that the absence of the term "environment" from Bill 68 is a critical omission and we have three basic points to make to substantiate that argument.

The first is that there is an intimate link between poverty and environment. Section 2 relates clinic law to those areas of law which particularly affect low-income individuals or disadvantaged communities. There is ample literature demonstrating that low-income individuals and disadvantaged communities experience disproportionately high impacts from environmental problems. Poor people are exposed to multiple sources of pollution since they often work in polluting industries. Inner-city poor often reside in city neighbourhoods of mixed industrial and residential housing, while rural poor people are more likely to reside near power stations, transmission lines, landfill sites and other areas of environmental stress.

There is also clear evidence that because poor people are exposed more to multiple sources of pollution, adverse health effects follow hand in hand. There are of course fewer financial resources for those people to use to avoid the impacts of pollution, less preventive information in current terms and relatively less access to health care. In a background paper that we submitted along with this submission we talk more about the connection between environment and poverty law. Certainly in the last 20 years, which is the length of time CELA has been a funded legal aid clinic, that connection has been made more often in the literature.

The second basis for our argument that environment should be included is that it does meet the general objectives of the bill. Bill 68 is intended to provide legal services, whether by private bar certificates or by clinic services, in those areas that cannot be appropriately or adequately served by the private law bar. The private bar, however, is generally unable to provide legal services in environmental matters to those without financial resources.

Private bar legal aid certificates for environmental matters have not been provided for many years. One of the primary reasons for the discontinuance of certificates for environmental issues is that the provision of environmental services through the clinic system is more efficient

and less expensive than provision of these services by the private bar, even under legal aid certificates.

The backgrounder notes that the quality assurance review found that CELA is highly effective in serving the client community. I know that the association of legal clinics made submissions about the quality assurance review. We certainly had experience with that this year and CELA came out very well in the review process.

Also, poor people do not have access to intervenor funding for those issues where it was previously available, and hence there is no way to have the legal fees reimbursed. In many environmental hearings, cost awards are not made with the result that there's no opportunity for a private lawyer to carry a client's case and achieve any financial recovery at the end of the day. Since most environmental matters are not matters in which CELA's clients have a direct pecuniary interest or recovery, there's no opportunity, again, to use the proceeds recovered in the matter to reimburse the private bar.

In cases where CELA does deal with a matter where cost awards are available and it receives a cost award, the cost award is used to reimburse disbursements and then the balance is paid back to the legal aid plan.

Our third basis for saying that environment should be included in the definition of clinic law is that it would add certainty. It would also add continuity. As I said, CELA has been funded for 20 years as a clinic law service. Since environmental issues do affect low-income individuals and disadvantaged communities, and providing these services through the clinic regime is the most expedient manner of provision, the inclusion of the term would serve to formalize the relationship and ensure the furtherance of that relationship over the long term.

On the issue of CELA's servicing of the community, the Environmental Bill of Rights has been an access point for people of low income as well as others. CELA has been one of the users of the system that actually, on a regular basis, checks the registry and has represented clients effectively under the Environmental Bill of Rights.

Lastly, our recommendations for amending Bill 68: Basically, in the definition of "clinic law," clause (b), we don't suggest any changes other than adding the word "environment" under (b), which includes human rights, health, employment and education. We would insert "environment" before education.

Although these changes would not affect the ability of Legal Aid Ontario to fund environmental issues and clinics practising environmental law, because we do think that is still provided for to some extent, the inclusion is warranted and justified and would certainly provide some assurance to people who are concerned about the continued provision of environmental law services in the clinic context.

**The Chair:** Thank you very much. That allows us two minutes per caucus for questions. We'll begin with the official opposition.

**Ms Castrilli:** Thank you very much for being here. Thank you for giving us a copy of your brief in advance.

I think you make a very compelling case. I think your requests are very modest and I can't imagine that the

government might not want to include them. I would like to think it's an oversight.

I want to ask you about funding under this legislation because I think that's where the real trick is. It doesn't matter what you include under the definition of "clinic," if you're not prepared to fund those clinics adequately, the rights you may have under the legislation are in fact meaningless. As you know, at the moment, there is certainly in the act something that says clinics may be funded for up to three years. I wonder what advice you could give us in order to make that funding more stable.

**Mr Paul Muldoon:** I can respond.

One of the things about clinic funding, it seems to me, is that in order to serve our constituency, which is disadvantaged communities and low-income people, there needs to be continuity. Part of that continuity is expertise on the issues.

A three-year funding window is a positive step, it's more than we have now, but one of the things that's very clear, in my view, is that clinic funding is below budget. We need more money to deliver the services. There's been basically a freeze within the clinic system since 1992. There should be some commitment to permanent funding in the clinic system to allow that continuity to happen. There's already, in my view, checks and balances in the system to ensure it's delivering effectively. I think, like any other government program that's essential, there should be some long-term continuity to that program.

**Ms Castrilli:** Would you be in favour, as has been suggested by one previous presenter, of a rolling three-year budget? You'd never get to the end of a three-year mandate. You're always setting a new budget as you go forward.

**Mr Muldoon:** It's certainly better than the system we have now.

**The Chair:** Thank you. We move to the third party.

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**Ms Marilyn Churley (Riverdale):** Thank you for your presentation this morning.

Let me say first off that the NDP caucus will be preparing an amendment to section 2 which will have "environment" listed in the definition of "clinic law." So we will be presenting that amendment.

Both of you pointed out that because of intervenor funding now gone, and I would add that environmental assessment process really gutted, and other laws, it's all the more important for communities or individuals who don't have the money to have access to environmental lawyers.

My question is around this: I have heard out in the community that environment was part of the definition of "clinic law" originally in the draft proposal — I can't prove it today but I'm working on it — and that it was taken out, which really concerns me. I can't imagine why. If it were there, it makes imminent sense that it be listed. I'm just wondering if you've heard this and if there's perhaps something going on we don't know about. Have you heard the same rumour?

**Mr Graham Rempe:** Certainly, given the tone of the McCamus report and given the extensive informal con-



sultation process that took place prior to this, it was our expectation, certainly our hope, that we were going to see environment included in the core areas with matters such as health and education that are there. Of course, we're very disappointed that we don't see it at this time.

For the reasons my colleagues have referred to, our submission is that it should be there; it's very important that it's there to ensure three things: first, the recognition of the disproportionate effect of environmental impact on poor people; second, given the absence of other areas as you've indicated, that access be assured; and finally and perhaps most important, to provide some certainty and continuity in that area.

**The Chair:** Thank you. We'll now move to the government members.

**Mr Wayne Wettlaufer (Kitchener):** Thank you very much for your presentation this morning. I have a question around your subsection on the environment. I was wondering, for my own information, if you could give me some of the literature that demonstrates the incidence of low-income individuals and the disadvantages of communities suffering from environmental problems. I have a reason for asking this, and Hansard will record it, if you can.

I know of a particular rural area in Huron county that is not what you would call low-income, yet there's a relatively high incidence of cancer in that agricultural community. I wonder if you could give me, for my own information, the list of literature.

**Ms Spoel:** Sure. If you look at the backgrounder that we filed as an addendum to our submission, on the back page, footnote 1 lists a number of articles in support of that proposition. I would like to say, however, that simply because low-income communities have a disproportionate share of environmental problems, it doesn't mean that communities that aren't low-income don't have environmental problems as well. We just don't act for those communities because they're not eligible for our services under the legal aid plan. It's not to suggest that low-income communities have all the problems, simply that they more frequently have problems. There are certainly problems in more affluent areas as well.

**Ms Patterson:** Most of the references here are to Canadian articles, but there is a large body of American publications as well. If you were interested, we could provide a list of those as well.

**Mr Wettlaufer:** I would appreciate that.

**The Chair:** Thank you very much for coming forward today with your presentation. We very much appreciate that.

#### STASHA NOVAK

**The Chair:** I call upon the next presenter, Stasha Novak, if you could come forward, please.

**Ms Stasha Novak:** Thank you, Mr Chairman. My name is Stasha Novak. I've applied for legal aid several times. I will follow from the presentation that just left.

My health and my life were affected in 1986, when my fifth-floor apartment was flooded with sewage three times in a year and a half. That was the famous Cadillac apartment block in High Park which immediately sold. The government I believe took receivership, and management and maintenance deteriorated. My fifth-floor apartment was flooded with sewage three times. When I got home, all my belongings were damaged. Overnight, I didn't have a place to live. I thought the landlord would be responsible and take care of me, but I was left destitute with no shoes, no bed, no nothing, on the streets.

I immigrated to Canada when I was 25 years old. I worked from the day I arrived, and until 1990 I worked at the Canadian Imperial Bank of Commerce.

As a result of the sewage flood my health deteriorated, as I said. I applied for legal aid. I had to go to court about 11 times. I received only some rent abatement and no additional accommodation. While I was paying full rent, I was living at the Salvation Army at 419 Dundas St East, at my friends', in about 11 different places.

The result from the legal aid was that I was like a nuisance. It wasn't something that people even liked to talk about. Finally, after several years I went to Small Claims Court because I was out of statute of limitations. The judge gave me punitive damages. I was able to claim \$6,000, but my life was gone.

There was more to it. I didn't have much money and I went to the dentist, who sensed that I was vulnerable, and he did dentistry on me for which he was not qualified. This is my biggest problem.

I had been dealing with legal aid and this has been in legal hands since 1989. It's now 1998. I've submitted many medical reports, particularly numbers 6, 9, 11, 12, 13 and 14, which explain my medical condition in great detail. I would request that perhaps your members would at least read number 6. It was written by a neurologist to my then lawyer, that I had stabbing jaw pains, that I had a brain scan and that it was not normal, and that I suffer from memory impairment.

Why, when my doctor sends letters to lawyers and legal aid, are they not responding? Where do I go as a disabled person? It brings me no pleasure, and extreme humiliation. I have to tell you I could not remember my name.

At that time my employer, the Canadian Imperial Bank of Commerce, had dismissed me without drug or dental coverage, nothing. My neurologist applied for disability through the government of Canada.

I had to move to subsidized housing, where I was promptly assaulted. That took another three years. Now I'm living with my friend.

I'm sorry I got ahead of my story. I put something in writing and I would like to read it to you.

#### 1100

The legal professional, the custodian of social order, has been looking after my interests for over 10 years, since 1988, but because I'm not a criminal, automatic access to legal representation not apply to me. Common criminals, the bullies who assaulted me, a hit-and-run driver, a fraud artist, all have an automatic right to legal

representation, but as someone in my situation who's been left destitute by the incompetence of dental and medical practitioners and a negligent lawyer and has had her ability to earn a livelihood destroyed, I have no automatic right to legal representation. I have to beg. I have to justify. I have to plead. I have to explain my dental pain and sexual assault by my former dentist to some anonymous, four-member legal aid committee, but my voice and my visible pain are not enough.

Second-hand information supplied by yet another lawyer, doctor or even psychiatrist is needed with all details of my life, as if I, a human being, am not worthy to listen to. I was working in a responsible position for 25 years. The moment I became a victim, I lost all credibility. I'm treated differently by most professionals, save some exceptional people. There were some very, very caring professionals. I can't paint all with the same brush.

I had legal aid for the flood at my apartment, as the landlord was negligent. I had it for the assault and the housing, for dental malpractice and sexual assault by the same dentist, and a surprise, what we have here: two negligent professionals, my second dentist and my second lawyer, according to one of my lawyers. The law firm has four legal certificates at the same time, on my name, on my problems. None of them were solved and they left me in worse shape than before. The billings to legal aid were huge. A victim is a good meal for many. This case and the people involved — there is more circus here in this case than in any figure skating competition.

I would like to tell you what chronic dental pain and TMJ and 400 dental appointments in 10 years mean to someone. One is particularly vulnerable in a dental chair while the dentist is examining and working in your mouth. You cannot see it for yourself, so you have to rely on a dentist's honour, and in my experience, integrity and honour are lacking in the dental profession. I noticed some dentists have difficulty deciding the treatment plan and the fee for it and putting it in writing in a legible form.

Dental work is not covered by OHIP. If I have no money, I have to suffer in pain. If I have a prescription for Tylenol 3 painkillers, and if I don't have money, I have to suffer in pain. The dentist who put the crowns on my teeth was not qualified to do the dental work on me. The Royal College of Dental Surgeons of Ontario reprimanded him and asked him to take some more courses in dentistry after they examined his dental work on my teeth. The college decided that all dental work by Dr Vojnovik would have to be replaced by another practitioner.

My second dentist was also reprimanded, and the third dentist lost his licence with the same college. So what happens to the patient who receives poor dental work if your dental work is in a "holding pattern"? What happens to your teeth when your dentist loses your dental records when the royal college has the opportunity to look at them?

When the dentist messes up your teeth, you also develop medical problems. The medical profession offers very little help for dental problems. Some family physicians are unwilling or unable to recognize medical conse-

quences of dental disasters. You can go back to the dental profession, provided you have a lot of money, and the dental profession can correct the mistakes of the first dentist. Often, the dental profession cannot do much for you. Some dentists would not treat you. Some would further mistreat you.

In the last 10 years, I had over 400 dental appointments. I was treated by 41 dentists, 32 of them at the Mount Sinai dental clinic. Some of my dentists were exceptional, caring professionals. One I would like to include is Dr Barzilay, whose report is included in here. But it takes only one dentist to mess up your teeth. Because of this chronic pain, facial neuralgia, horizontal loss of bone, months of x-rays, Panorex, TMJ, painkillers, Tylenol 3, I recently had soft tissue cut from the top of my roof and sewn on the bottom. Infections, abscesses, inability to chew or speak properly and earn a living, then you become a psychiatric patient, provided your psychiatrist can understand chronic dental pain and the psychological response to it.

The cost to society of this incompetent dental profession is enormous, but there is very little help for the patient. Because of my faulty dental work, I lost my employment at CIBC, my employment of 19 years, my life insurance, my drug plan, my dental plan, my dignity, my purpose in life, my work, my health and most of my teeth. Because of dental work, my face is disfigured and I will suffer till the day I die.

It is about time that this government directly held the governing profession accountable for their actions, including the Royal College of Dental Surgeons of Ontario and their liability insurance and the lawyers who are involved with it. I don't think they could do without the legal profession. My psychologist put it so succinctly: "You have a man-made disaster. Had your dentist been competent and then your lawyers, you would be doing this instead." Instead, this is what I am.

I include a document relating to my employment, medical, legal and dental reports, legal correspondence that insurance or the lawyers did not answer, Criminal Injuries Compensation Board and the latest dental case. It's been 10 years. Why?

**The Chair:** Does that end your presentation? Thank you very much. That allows us a little over two minutes per caucus. We begin with the third party.

**Mr Kormos:** Ms Novak, I've been reading the contents of this file and listening to you at the same time. I hope you understand that I've been doing both. There's a lot of material here. We just got it. You've been screwed royally. I have no hesitation to tell you that.

There was a letter from Swadron that talked about an offer to settle. What happened with that? Very quickly; we haven't got a lot of time.

**Ms Novak:** I was injured on my knee —

**Mr Kormos:** No. What happened with this offer to settle?

**Ms Novak:** I couldn't take it.

**Mr Kormos:** OK.



**Ms Novak:** They sent it in the mail and I didn't even speak to them.

**Mr Kormos:** Who's representing you now?

**Ms Novak:** I spoke to —

**Mr Kormos:** Is anybody representing you now?

**Ms Novak:** No.

**Mr Kormos:** OK. That gentleman right there is Harvey Strosberg. He's the treasurer of the Law Society of Upper Canada. He's the top lawyer in all of the province.

**Ms Novak:** Yes, I'm aware of it.

**Mr Kormos:** You've gone through a whole whack of lawyers, right? You need somebody who's going to look at your case and deal with it once and for all. Do you know what I'm saying?

**Ms Novak:** Yes.

**Mr Kormos:** So it's done and dealt with. I would suggest that you talk to Mr Strosberg before you leave here today. He's got staff with him. You may need a lawyer who's going to go out of his or her way and do a pro bono. But you've been screwed over enough times that somebody should take up the ball and carry it for you. So talk to Mr Strosberg before you leave here. He's the treasurer of the Law Society of Upper Canada. He's got staff here. He's got another one of his law society members here who would be pleased to talk to you as well.

**Ms Novak:** I would like to tell you, members of the committee, I'm not here to bad-mouth anybody. Please forgive my language.

**Mr Kormos:** Don't worry about it.

**Ms Novak:** I just want to tell you what happened. This should not happen to anyone.

**Mr Kormos:** You're right.

**Ms Novak:** No one. My life is not worth more than any one of you and I respect everyone's life. That's all. I thank you for listening.

**The Chair:** Thank you very much. Any questions from the government members? From the official opposition?

1110

**Ms Castrilli:** Thank you very much for coming. I can only imagine the pain you're in and how courageous you are to be here and I do want to thank you.

I don't want to ask a lot of questions because I know it's very difficult for you. What appears to me from this file, and like Mr Kormos, I have been trying to read it as you talked, is that there hasn't been a consistent standard of service with respect to you by either the dental profession or, as you allege, the legal profession.

**Ms Novak:** It repeats, just on and on.

**Ms Castrilli:** Yes. As we struggle to try and make a legal aid bill that would help people like you, the question I have for you is, what kind of minimum standards do you think we should include? Can you give us some advice as to what you think should be in this legislation so that what happened to you won't happen to others?

**Ms Novak:** I don't think we have to legislate. I think we have to raise the standard of our consciousness and behaviour. You can build court houses and legal aid from here to Thunder Bay, if everybody can lie and deny in

court. How many are being denied? Do you know how painful it is to hear, "It's not true," when you have solid evidence? Unless we raise the consciousness, we will not go anywhere. It's just more masking and painting over.

Also, legal aid did send me to a collection agency, page 50 of my documents. I had a broken wrist, my apartment was flooded, I had dental pain and I came to legal aid, "How much do you make?" That was the only criterion. They asked me to pay \$60 a month, which was very hard for me at that time. But they didn't ask, "Just pay." When I couldn't pay, "You promised to pay; why you didn't pay?" and they sent me to collection agency. This judgement is good for 20 years. That is insane. That is insanity.

**Ms Castrilli:** Thank you for raising the conscience of this committee.

**The Chair:** Thank you very much for coming forward today.

## LAW SOCIETY OF UPPER CANADA

**The Chair:** We call our next presenters, the representatives of the Law Society of Upper Canada. If you could come forward and identify yourselves for Hansard, we would appreciate it.

**Mr Harvey Strosberg:** Thank you, Chair and members of the committee. My name is Harvey Strosberg. My friend Bob Armstrong is with me. I'm the treasurer of the law society. If I may, I'd like to make a few opening remarks.

From about 1967 to 1994, the law society administered the legal aid plan and the government of the day was required to pay the costs, whatever they were. In 1994, the government imposed capped funding upon the legal aid plan. This required the law society, as the administrator of the plan, to make difficult policy choices. Some very deserving people were denied legal aid when they desperately needed it. There was simply not enough money to provide legal services to all those who were deserving. A divergence of opinion developed within the bar. The criminal lawyers wanted the law society to end its involvement in legal aid; family lawyers and immigration and refugee lawyers wanted the law society to continue as the administrator of the legal aid plan.

In June 1997, when I became treasurer, Professor McCamus was doing his report and in August 1997, he delivered his report. Ultimately, convocation, which is the governing body of the law society, decided it was not prepared to make the policy decisions that were fundamentally inherent in operating a legal aid plan under capped funding. The result was Bill 68. I can tell you that the law society supports the bill and that I too support the bill.

This bill has the benefit of establishing a board of directors that is as independent as it can be from government in a practical sense. The society, however, suggests that there are a few amendments that may be considered as improvements to the bill. I'd like to deal with those briefly.

The first is the definition of "service provider" in section 2 and subsection 14(4). The society says that those definitions should be changed to delete references to "paralegal" and "mediator." The reason for that is that there is no definition of "paralegal" or "mediator" in the act. The questions inherent in those definitions are best left for another day. The current practice is that legal services under the act are provided by persons who are lawyers and by persons who are not lawyers under the direct supervision of lawyers.

The second suggested amendment relates to section 91 and deals with the audit program. The society's position is that it would be preferable for Legal Aid Ontario, the new corporation, to request and direct the society to do the audit. The society is in the business of doing audits of lawyers. In this way, legal aid lawyers will not be disadvantaged and clinic lawyers will not be disadvantaged by being subject to two audits.

The third is a technical issue, and that deals with section 18. The society has on hand substantial dollars and those dollars are being turned over to Legal Aid Ontario. It should be clear under section 18 that the law society is released from all the liabilities. That is what the intent of the section is, but our lawyers tell us it could be done a little clearer and we ask that that be amended also.

Those, I believe, may not be contentious changes; I hope they're not. But there certainly is one contentious issue here in the bill and that deals with the question of immigration and refugee lawyers relating to subsection 13(1). There is in the act a provision that talks about immigration and refugee law, the funding being guaranteed for two years. There is no doubt that the obligation for refugee law is a federal obligation. There is also no doubt that more money could be paid by the federal government for refugee law.

I directly raised this issue with the Minister of Justice in August 1998. In the society's opinion and in the society's view, it is wrong to have disadvantaged people, immigrants and refugee people, not guaranteed legal aid under subsection 13(1). The society's view is that immigration and refugee law should be included.

Having said that, I recognize the political problem that is inherent in ingraining that in the statute, because the minute that it's ingrained is the minute the federal government may say: "By statute you have to provide it. Why should we provide more money?" So I understand the political problems, but the society's position is that the moral responsibility and the right thing to do is to engrain it under 13(1).

Those are my comments. I'd be delighted to answer any questions if I'm able to do so.

1120

**The Chair:** That allows us four minutes per caucus. We begin with the government members.

**Mr R. Gary Stewart (Peterborough):** I have just a couple of questions. It may not be fair for me to ask you this question. It came out at the hearings yesterday, from the Canadian Bar Association. One of the objections they had yesterday was on appointment to the board or to the

corporation, that benchers of the law society are not necessarily representative of the lawyers providing legal aid services.

It's my understanding that benchers, and I stand to be corrected, are those who in some way make sure that the lawyers are conducting themselves in a favourable manner etc. Please correct me if I'm wrong. That could be a broad interpretation. But when they came and made this recommendation and objection, I didn't have a chance to ask them why, so I'm going to ask you why. You don't have to answer this if you don't wish to, sir.

**Mr Strosberg:** No, I'd be delighted to try. The law society governs the profession in the public interest. Every lawyer must be a member of the law society. The Canadian Bar Association is a voluntary organization. Every lawyer does not have to belong to the Canadian Bar Association. The Canadian Bar Association plays a different role. It's interested in things that are good for lawyers. As treasurer of the law society, I say that the treasurer and convocation benchers govern the profession in the public interest. Because we govern in the public interest, there is often tension between the law society on the one hand and the Canadian Bar Association on the other.

I come here and say there are some things that may not be good for lawyers but they're good in the public interest, and I see the Canadian Bar Association disagreeing with me because they say it's too hard on lawyers. I believe benchers who are elected by the profession at large are best suited to make the decisions that relate to what is best in the governing of the profession in the public interest.

In the establishment of this corporation, I was concerned about having a corporation that was providing legal services to people who were effectively, in large measure, fighting with government, because if a person's accused of a crime, it's the Attorney General that is prosecuting. What I thought and what convocation thought was wrong was to have a legal aid corporation that would be controlled by the very Attorney General who would be prosecuting a large number of these people. So this is a delicate balance.

The law society, which governs the profession in the public interest, will put forward a list of five people, and the Attorney General five. You have a balanced board that is as close as you can get to having a board that's independent. It doesn't say there has to be three benchers on the board; it says there can be no more than three benchers. A person shouldn't be disqualified from being on the board because she or he is a bencher. It's simply saying no more than three.

**Mr Stewart:** You don't have any great objection to having up to three on that board.

**Mr Strosberg:** It creates an appropriate balance. If the CBAO or some other organization was saying that they'd like to have a nominee on the board, I think that's simply wrong. The law society governs the profession in the public interest. These other organizations are interested in criminal lawyers, or in immigration lawyers, or the Canadian Bar Association in the legal profession, in their own interests. Those are appropriate interests to be repre-



sented, but not I believe on a board such as Legal Aid Ontario.

**The Chair:** We now move to the official opposition.

**Ms Castrilli:** Thank you very much for being here. Everyone's been talking about the law society in the last three days of hearings. It's great to hear it from the horse's mouth.

**Mr Strosberg:** I'd like to be called a lot of things but not a horse.

**Ms Castrilli:** Well, the mouth is better than other parts. If I may, I'd like to make a comment because you brought up the issue of immigration-refugee. I think it's very important to focus on that for just a moment, although I really want to ask you some other questions.

We had a very thorough presentation our first day of hearings from the Roman Catholic diocese of Thunder Bay, which has a reputation for doing groundbreaking work with refugees in the north. They addressed this issue of whose responsibility it is, the federal government or the provincial government, to provide for refugees.

They advanced some very interesting arguments. First, that there are certainly some conventions out there that Canada is a party to. I've asked the researcher to follow up on that because it's very important. I've been assured we'll receive that information this afternoon. The comments they also made are that you can't say that we're not going to provide assistance at the provincial level for refugee and immigration because it's federal jurisdiction, because if you say that, then you're actually saying that you won't provide it for criminal law either because that's also a federal jurisdiction. If you have an opportunity to read that brief, I'd be interested in your comments because it's clearly not what you're saying.

**Mr Strosberg:** I haven't seen that brief.

**Ms Castrilli:** We will get research this afternoon. I'd be interested in some of your comments.

**Mr Strosberg:** I think there's a difference. The administration of justice in the province is a provincial responsibility. That's the distinction between criminal law. I agree that Canada is a party to the fourth Geneva convention which was enacted in August 1949 and the protocol under the Geneva convention. That's why refugee law is different. There's a different tension relating to refugee law than immigration or criminal law.

**Ms Castrilli:** Absolutely, but you also know that the federal government and the provincial governments enter into negotiations in all kinds of matters, that this is an issue that could be dealt with, should be dealt with under the general transfer of funds. I don't think it's just as easy to say it's a federal responsibility and we shouldn't deal with it.

I want to ask you, how much say did the law society have in the drafting of this bill?

**Mr Strosberg:** I think it's fair to say that the law society was involved in close consultation with the Attorney General's department and was very concerned about ensuring there was an appropriate balance. What I was very concerned about is ensuring there is, as much as

possible, an independent corporation for the reasons I've said in response to your friend's questions.

**Ms Castrilli:** That's fine. We've had a lot of evidence here over the last three days from all kinds of groups that have said, "Look, under the current legislation, environmental law is there, immigration law is there." We've had aboriginal groups saying: "There is an aboriginal law clinic. We'd like those things protected in the legislation." How vigorously did you pursue the inclusion of groups such as those and the continuation of the legislation as it exists?

**Mr Strosberg:** Ms Castrilli, I didn't because I think it would be wrong to ingrain it, just as 15 or 20 years ago there was no aboriginal clinic. There may have been a need for it. Ten or 15 years from now, there may not be a need for a particular clinic for a variety of reasons. When there's capped funding, policy decisions have to be made. Some worthy areas and some people who are entitled to legal aid services are not going to get legal aid services once you decide you're going to go into capped funding.

The board is going to have to make policy decisions. This committee isn't in a position, I say respectfully, to be able to weigh forever in the future. That's the reason the definition of "clinic" talks simply about clinics. I think it's quite right to be in that fashion because the board, which will be a representative board and which will have the benefit of subcommittees and advisory boards, will make decisions. As I read the legislation and the intent, \$32 million is intended to be earmarked for clinics, which is precisely the same amount. As I understand it, there are no plans to change existing clinics.

People who have clinics have an interest to say, "I want you to perpetuate me." I say that's not the purpose of this legislation, to perpetuate a clinic in a particular area, because on a policy basis it may be that something is more deserving or some money has to be funnelled off to something that's more deserving.

**The Chair:** We have to move to the third party.

**Mr Kormos:** You say refugee law is a federal obligation.

**Mr Strosberg:** It is.

**Mr Kormos:** As Ms Castrilli indicated, we're getting all sorts of mixed opinions in that regard.

**Mr Strosberg:** It's my opinion, for what it's worth, based on the advice I have, that refugee law is a federal responsibility. What the federal government has done is it has moved refugee law into the same bill as immigration and treats immigration and refugee law as the same. A refugee is somebody who flees from somewhere and comes to Canada as a safe haven; an immigrant is someone who comes here as a matter of choice. Canada has an obligation to deal with refugees in a different manner, because of international conventions, than it does immigrants.

When I dealt with the Minister of Justice, I took the position that the federal government was not heeding its obligation, in terms of refugee law, to legal aid. They substantially cut the contribution. I did this in August 1998, this past August, when the minister was speaking to

a number of the law society who raised this issue particularly with her because the law society has the obligation to administer the plan.

1130

**Mr Kormos:** Understand, I'm not defending Chrétien and his Liberals.

**Mr Strosberg:** I thought you were.

**Mr Kormos:** By no stretch of the imagination. They're as much scoundrels and as much a partner in the down-loading with the Tories as anybody could be. They down-loaded on to the province. It's a matter of, "How do you like it so far, Mike Harris?" because that's what he's doing to municipalities across the province.

**Mr Strosberg:** Is this a question or a speech, Mr Kormos?

**Mr Kormos:** It's both, Mr Strosberg. That's the risk you take when you leave four minutes per caucus.

I agree that refugee law is a federal jurisdiction, but so is the Criminal Code, so is —

**Mr Strosberg:** The administration of justice is a provincial responsibility under the Constitution Act.

**Mr Kormos:** What about aboriginal law, which seems to me to be a mixed bag in both exclusively federal jurisdiction and some modest provincial role?

**Mr Strosberg:** You and I can discuss constitutional law; I don't know that that's going to help us at this point. I'm sorry, what's the point, Mr Kormos?

**Mr Kormos:** The point is that you seem to be joining with the government in merely wanting to lay the blame at the feet of the federal government, when in fact it's the province that provides legal aid services.

**Mr Strosberg:** You must have misunderstood me. I said that I thought and the society thought that section 13 should be changed to include refugee and immigration law. Having said that, I said I recognized the inherent problem in doing that. But I came here saying that I said, on balance, I believe the moral decision is right to put it into subsection 13(1), and I think that puts me opposite of what the legislation is.

**Mr Kormos:** No, I think it has you straddling the fence and having the best of both worlds.

**Mr Strosberg:** I don't think it does, Mr Kormos.

**Mr Kormos:** It's easier for me to observe your position than it is for you to observe your own.

Why would you support or bolster the argument that refugee law is somehow distinct from other areas of law with federal jurisdiction such that the federal government has an enhanced responsibility vis-à-vis that area as compared to others?

**Mr Strosberg:** Because, Mr Kormos, it's not a question of me doing anything but telling you what my honest belief is. You may disagree with that and you're entitled to it. You're a lawyer just as well as I am and you can make that determination. I can only tell you what my legal opinion is and I believe there is a distinction between refugee law on the one hand and immigration law, which has shared responsibility and administration of justice, which is another.

I had the research done. Having said that, convocation's position and my position is that the legal aid plan would be better if services for refugee and immigration law were ingrained in section 13. That is what the society's position is. So you and I are the same; you're just saying I'm not putting it strongly enough to the committee.

**The Chair:** Thank you very much for coming forward with your presentation.

**Mr Strosberg:** I'm grateful that you've given us the time, and I thank you for your attention.

**Mr Kormos:** Chair, on a point of order: Once again, I forgot to ask either of these two people if they do legal aid work in their practice.

**The Chair:** That was your opportunity in your four minutes. You do not have that time now.

**Mr Strosberg:** I do better than legal aid. I act for a lot of people; I just don't get paid anything.

**The Chair:** Thank you very much.

#### CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO DIVISION

**The Chair:** We would call upon our next presenters, the Canadian Mental Health Association, Ontario division. If the representative or representatives of the association could come forward and identify themselves for Hansard prior to beginning, we would appreciate it. Thank you for coming. You may begin.

**Ms Ruth Stoddart:** Hello, my name's Ruth Stoddart, and I'm here to represent the Canadian Mental Health Association, Ontario division. At the CMHA I do primarily policy work but I am also a lawyer, although I don't do direct legal services out of our office.

The Canadian Mental Health Association is part of a larger national organization that's actually 80 years old this year. We've existed in Ontario for 40 years and in Ontario the association consists of our office and 35 branches that provide direct services for people with mental illness. Those branches all provide community-based services, and although they don't directly do legal work themselves, they certainly refer a lot of their clients to legal services.

I'd like to start with a bit of an introduction about some of the problems that people who have mental illness face in accessing legal services. They're often doubly stigmatized in that people with mental illnesses may not be able to hold down a full-time job because of the cyclical nature of their illness and so may have low incomes. Also, if people are able to access legal services, there is sometimes a problem accessing a lawyer who does have experience in working with people with a mental illness and is willing to spend the time and take the effort to provide the extra assistance people may need.

I'd like to also reiterate some of the comments that you may have heard already from ARCH, which is the specialized legal aid clinic for people with disabilities, that concern people with disabilities and their problems with legal aid services. There are four points that ARCH



made to the Attorney General and I'd like to reiterate them.

First of all, and this is particularly applicable to people with a mental illness, someone's disability may make a particular legal issue more complex. Probably the most ready example that comes to mind is the criminal responsibility sections of the Criminal Code that have to do with people with mental illness.

Secondly, as I've mentioned, people with disabilities may have difficulty trying to represent themselves in a legal action if they're unable to get legal services.

Thirdly, as I've alluded to, people with disabilities often have low incomes and may not be able to pay for legal services.

Finally, the cost of legal services for people with disabilities may be substantially more than costs for someone without a disability.

For some of those reasons, our organization was certainly pleased to see the first section of Bill 68, the purpose section, which sets out, we believe, some things that will help protect various special populations or people with disabilities; things such as providing legal aid services in a cost-effective and efficient manner but encouraging also flexibility and innovation in the provision of those services through both the private bar and the clinic system.

Something else we felt was very important is the requirement throughout the legislation that the needs of people for legal aid services be assessed and recognized.

Finally, the independence from the government of the proposed Legal Aid Ontario Corp.

To discuss some of the issues we had with Bill 68 directly, the first thing I'd like to talk about is governance. We are pleased to see that Bill 68 proposes the creation of Legal Aid Ontario, which is to be an independent corporation that will provide legal aid services. Certainly we believe that an independent corporation is necessary so that the corporation is not only seen to be independent but actually is independent. In our experience we know that only people who are truly seen to be independent from government are believed to be so.

The Canadian Mental Health Association did have a couple of concerns regarding the governance of Legal Aid Ontario, the first one being the composition of the board of directors. As the previous presenters mentioned, the board is to be composed of essentially people selected by the Attorney General, half recommended through the law society and the other half directly from the Attorney General.

1140

We were a bit concerned about the fact that this may mean that not only could the board end up being fairly Toronto-centred, which is a concern as far as respecting the needs of people outside Toronto is concerned, but also that the board could end up being fairly professionally-oriented. I'm aware that paragraph 5(4)5 talks about people with experience in certain areas, including people who are familiar with the social and economic circumstances of disadvantaged groups. I think caution will be

necessary, though, to ensure that representation on the board is truly representative of the people who Legal Aid Ontario is going to serve. We've recommended that a provision be included regarding the board similar to that in the proposed clause 34(5)(a), which provides for both community members and service recipients on the board, because we believe the board would be far more representative.

A similar concern exists with the advisory committees to the board. Section 7 establishes various advisory committees to the board. Certainly we believe that these committees should include community members.

A second consideration is that subsection 7(1) indicates that it's mandatory that "The board shall establish an advisory committee in each of criminal law, family law and clinic law and in any other prescribed area...." We question, though, in section 13, when the services that are provided by Legal Aid Ontario include the traditional family, criminal and clinic law but now also include mental health law, why mental health law is not also included as an area with a mandatory advisory committee if it's going to be a mandatory area for services.

As far as the actual delivery of services, the Canadian Mental Health Association recognizes that services are now and should continue to be delivered in a variety of ways: through the clinic system, through certificates and through the private bar. The one thing that our organization was extremely pleased to see, as I've already mentioned, was the inclusion of mental health law in section 16 as an area of law that will be covered by Legal Aid Ontario.

We did, however, have some questions. Section 13 seems to be the only mention of mental health law directly anywhere in Bill 68. The comment that we would like to make is that there's no definition of "mental health law" anywhere in Bill 68. It's our experience that not only does mental health law involve what's traditionally civil law — it's covered by some of the clinic systems, for example, under the Mental Health Act, the Health Care Consent Act, the Substitute Decisions Act — but also is very much involved with the Criminal Code through the mental disorder provisions. We would suggest that mental health law should continue to be provided, as it is now, by both the private bar, particularly on the criminal side, and through the clinic system.

Something else that we were interested to see was the part of Bill 68 which talks about needs being assessed for legal aid services throughout the province. The clinic system now uses community consultations, community input to determine client needs, and the Canadian Mental Health Association believes that it's very important for local needs to continue to be brought forward, perhaps through the clinic system or through other community consultations so that they can be considered at the provincial level by the board in its priority setting.

I've indicated in our paper that it's not very difficult to imagine situations where needs could be very different in different areas of the province, for example, for persons with mental illness. Quite often when people are outpatients from provincial psychiatric hospitals or schedule 1

units of general hospitals or have recently been discharged, they may remain in the community where they were an in-patient. Certainly those communities would have an increased need for people with experience in mental health law on both the criminal side and the civil side, so we think it's quite important that different needs be recognized in different areas. This would relate to priority setting as well, that priorities may be different in different areas of the province.

The Canadian Mental Health Association is also quite pleased to see the provisions in Bill 68 that concern quality control and evaluation of services that are to be provided by Legal Aid Ontario. For example, section 59, section 37 and section 70 all provide for accountability and quality control mechanisms. Again though, as with the advisory committees and with the board, we would urge that consumers of services and people in local areas not only have input in determining goals and priorities and needs but also in evaluation of whether or not those needs were satisfied. We think it's very important, in measuring whether or not needs are being satisfied, that not only outputs be considered — for example, numbers of cases processed or number of people processed — but also the outcomes: what people who received the services actually thought of those services.

One concern the Canadian Mental Health Association does have about Bill 68, and we certainly expressed this in prior consultations with the Legal Aid Review, is what appears to be an allowance for the continuation of block contracting that's beginning with legal aid services. Probably the way I like to think about it is that it's very similar to managed health care, which is very prevalent through the US and there's a lot of fear that it's going to exist in Canada.

Under block contracting a certain block of cases, usually in a particular area of law, would be contracted out to a lawyer or group of lawyers. With managed health care what's happened in these sorts of situations is that people will — it's usually referred to as "cream skimming" or "adverse selection" — people will only take the easiest cases or the clients who are the easiest to serve. If they have to take a block of cases that includes maybe more difficult-to-serve clients, those clients may only get their two hours or \$100 worth or whatever of service, and people with disabilities, as I've mentioned, may need more time or more assistance than those block contracts may allow. As a result, our organization would urge that block contracting, if it's going to be continued, be piloted and be thoroughly evaluated to make sure that some groups are not being discriminated against.

In conclusion, I'd like to thank the committee for this opportunity to make a presentation and to urge the committee to consider the needs of vulnerable people and people with disabilities in thinking about Bill 68.

**The Chair:** Thank you very much for your presentation. That allows use two minutes per caucus and we begin with the official opposition.

**Ms Castrilli:** Thank you very much for your presentation. Mental health law, as you've pointed out, is only

mentioned in section 13. I guess the concern really is, what flows from that? We know that clinic law is going to be funded for three years. We know that immigration and refugee law is going to be noted for two years. What does this act say to you about funding for mental health law?

**Ms Stoddart:** I honestly can't speak to that because it wasn't something I considered. As a lawyer, I don't practice and certainly I don't do any kind of either directly paid or legal aid work, so I honestly didn't consider that when I was reading it. I think, though, funding for mental health law is certainly important and is probably going to become increasingly more important as provincial psychiatric hospitals are closed and as people are released from general hospital units. Things like representation at review boards and capacity board hearings as well as in landlord-tenant matters, social assistance matters are going to become more important.

**Ms Castrilli:** Could tell us a bit about the funding now as it exists for mental health law? Do you think it's sufficient? Is it too much?

**Ms Stoddart:** Mental health law right now is done primarily either through clinics or, on the criminal side, through the certificate system. I belong to a group that's called the Mental Health Legal Committee. It's a group of both private practitioners and people working in the clinic system who do primarily defence side mental health law. What I hear from that committee is that quite often on the private practitioner side, with certificates the time-giving is not long enough to adequately prepare and represent a case for someone with a mental illness because it takes longer, often, to assist that person or because they may have complex legal needs. Probably the main one that does a lot of mental health law is Parkdale Community Legal Services in Parkdale. A lot of their clients have mental illnesses and I know they spend probably more time with a lot of those clients than they would with someone without a mental illness.

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**Mr Kormos:** I've got to tell you, I am not as concerned about there being a lack of an exhaustive definition of mental health law as others might be. The fact is, it is included and a whole lot of other areas have been omitted. The real issue at the end of the day is the level of funding, the adequacy of funding. You can list all the kinds of law you want, you can have an exhaustive list of what you or others might understand to be mental health law, but if it isn't funded, it means squat, it means zip.

My concern with the bill is that there's no means whereby the corporation is ensured adequate funding. There's no minimum standard in the bill as to the provision of legal aid services, be it clinic or private bar. There's no independent arbitration that the corporation can go to, to guarantee that it has adequate funding. I'm just one little voice here and I'm just from small-town Ontario. Do you think I'm off base in having concerns about no guarantees as to adequacy of funding?

**Ms Stoddart:** No, I think there are concerns as far as adequacy of funding, not just in legal aid but in literally all services right now. Our organization is arguing for



funding for people with mental illness, and others from other organizations for other groups. If the services are provided in an effective manner and there is some sort of accountability for the funds that are spent — I realize there is going to be a problem in certain areas or with certain people.

**Mr Kormos:** You got a 30% cut in your provincial income tax. You may not know it, but you did. I believe it; I'm told we did. Would you forfeit that so-called cut to your provincial income tax if it meant adequate funding for legal aid services for, among others, persons with mental illnesses? Would you say, "You can keep the 30% income tax cut if that's what required to adequately fund public health, public education and legal aid"?

**The Chair:** Thank you, Mr Kormos.

**Mr Kormos:** You can answer that.

**The Chair:** Thank you, Mr Kormos. We now move to the government members.

**Ms Stoddart:** I'll talk to you after.

**Mr Stewart:** After that question, Ms Stoddart, I would certainly agree with what you suggested back halfway through your presentation, that we don't need all lawyers on this committee, to say the least. I guess probably —

**Ms Castrilli:** Is that a slur?

**Mr Kormos:** Wait until you need one. Wait until it's 3 in the morning and you're getting seduced —

**Mr Stewart:** Not when a particular lawyer asks that type of impertinent question which is probably none of his business.

**Ms Castrilli:** On a point of order, Chair: I want to note for the record there are no lawyers on the government side.

**Mr Stewart:** I hear you when you're saying that you're concerned that this could be very Toronto-based and that there could only be the legal profession on it. That concerns me as well, because I think people who maybe are neutral can have just as much to offer as those who are solely involved with a particular issue.

The other thing is that, representing a riding in rural Ontario, I want to make sure that the folks who need these types of services, who are mentally ill, are going to get them and are going to be represented well by those who do respect that there is an area other than Toronto in this province.

One thing that did perk up my ears — I believe Mr Kormos brought it up — was accountability. Do you feel that there is good accountability in the system? Do you feel that your clients, who are the mentally ill, who are in many cases vulnerable and so on, are being in some cases taken advantage of in this particular thing?

**Ms Stoddart:** Are being taken advantage of?

**Mr Stewart:** Taken advantage of by this present system.

**Ms Stoddart:** I wouldn't phrase it as being taken advantage of. I would phrase it as probably not being accommodated to the extent they should be, the recognition not being there that people, as I've said, may need more time or more assistance.

**Mr Stewart:** The reason I asked is because that's why we're changing the bill.

**The Chair:** Thank you, Mr Stewart. Thank you very much for coming forward with your presentation today. We very much appreciate that.

**Ms Castrilli:** If I might, I have a question. We've received from one of the area directors of the Ontario legal aid plan, Robert Buchanan, a memorandum which speaks to the issue I raised before of whether non-lawyers are in fact able to receive a legal aid certificate. As I note what our researcher presented, I noticed there are some additional provisions in the memorandum that was given to us. I wonder if I might just ask the researcher to look at those provisions and incorporate them into this memorandum, if applicable, so we have a full picture of —

**Mr Fenson:** My memorandum doesn't have every single provision that speaks to it anyway.

**Ms Castrilli:** All right. Could you just confirm that interpretation of what we have before us that was sent by Mr Buchanan, if that's in order?

**Mr Fenson:** I looked at it. Some of them are in my memo. There are some —

**Ms Castrilli:** Yes, I do notice that. There are others that, not having the act in front of us, I would appreciate if you could just confirm for us. Thank you.

#### ST LEONARD'S SOCIETY OF CANADA

**The Chair:** We will call our last presenter of the morning, if the representative or representatives of St Leonard's Society of Canada could come forward. Thank you for coming.

**Ms Elizabeth White:** Good afternoon and thank you for allowing us to present today. My name is Elizabeth White. I'm the executive director of the St Leonard's Society of Canada which, as you may know, is a not-for-profit organization working primarily with people in conflict with the law and those at risk of coming into conflict with the law. For over 30 years we've offered transitional housing, employment counselling, substance abuse work and, importantly, employment and life skills training.

Because of the nature of our work, we come in direct contact with many who require legal aid, particularly those who require criminal justice legal aid. You've heard good descriptions of who those people are and I'm not going to reiterate it for the record at this time.

We are very pleased to see the proposals that are coming out now. We think Bill 68 will go a long way to ending the uncertainty that has plagued the legal aid system and has plagued the lives of those who've needed support in the criminal justice system for the last several years. We're also pleased that the entity is looking slightly less corporate in structure, although corporate in nature, by having its name be legal aid, which we consider to be more descriptive. We're very delighted that a pluralistic system of service delivery is being retained. We consider that to be one of the core matters in this act.

There are some sections of the act, however, which do cause us concern and we submit they should be changed.

They're in the areas of limitations of the objects of the corporation; composition and appointment of the governance body; mandate of the transitional board; and the manner of prescribing areas of non-coverage.

Turning first to the limitations of the corporation's objects, clause 4(b) states that the "policies and priorities for the provision of legal aid services" shall be based "on financial resources." That's repeated in section 12. It is clearly important and necessary that the new corporation operate in a fiscally prudent manner, but it is crucial that there be vested in that body which manages legal aid the responsibility to consider the overriding requirements for legal assistance for Ontarians, regardless of whether or not adequate funding is in place at any given time.

Comments in the McCamus review had suggested that where resources were lacking, the new corporation should explore arrangements within the legal community at large. That could be one way. However, the general provision of advice to the Attorney General on matters affecting legal aid, which is found in clause 4(f), doesn't compensate for the limitation in the previous subsection. In order to maintain confidence in the scope of Legal Aid Ontario's mandate to give full justice to legal aid needs, it would be appropriate to delete the words "based on its financial resources." There are many other factors than money alone that have to be involved in these decisions, and to mention one without others is to give undue prominence to it and to possibly skew the decision-making of the new corporation. We don't think that was anybody's intention, so we suggest the legislation be changed.

#### 1200

In terms of the composition and appointment of the governing body, we think the provisions of subsections 5(2), (4) and (6) unduly politicize the process. They have the potential to cause the body to be seen merely as an arm of government rather than an independent body. The fact of and the appearance of independence are essential to confidence in the system as an impartial decision-making entity.

The current wording of subsection (2) places an unnecessary burden on the person of the Attorney General, whose role must be prescribed by the exigencies of partisan politics. As a politician, to rest such full control of the governance composition on one individual's shoulders is to create the impression that the corporation may be a creature of the politics of the day. Rather than place that burden of selection of directors intended to reflect all Ontarians' needs so completely in the Attorney General's hands, we urge the use of a more broadly based decision-making process. With the best of intentions on the part of all concerned, the current provision will not allow the impartiality of decision-making to be seen to be done. Clause 1(d) stipulates that the corporation shall "operate independently," but at this point the perception of independence is not borne out by the later sections.

With regard to subsection (4), St Leonard's Society believes that the ordering of the criteria for selection could be improved. Again, it's not in doubt that sound management is important, but by placing it as a first criteria the

legislation strongly directs that these shall be the first considerations in appointment selections.

The body that's being governed is for legal services and awareness of legal matters and needs should, in our view, be a first priority of selection. Diversity on the board will be a benefit that will keep a broad range of factors on the table; but these are matters of law, after all, and law should be the first priority.

Given our concerns as previously noted, it's consistent that we have reservations about subsection (6). The very fact of being a lawyer should not in itself be enough to disqualify one from membership on the board as a result of a quota. In fact, given that the matters to be governed by the board, by and large, will relate to legal matters, one might suggest that a majority of persons should be lawyers. But in our opinion the provision is best removed and no quotas used.

The transitional board: We think it's a good thing that there's going to be a transitional board because what's going to change is going to be huge, it's going to take time and there are going to be complications as it goes along. But we have some reservations concerning the specific provisions set out in sections 9 and 10.

Owing to the range of matters within the mandate of the board, and the fact that there are no time limits set for its mandate, there is a clear possibility that the framework for the future functioning of Legal Aid Ontario will be set in stone long before the first board is appointed. The composition of the transitional board is even more politicized than that of the permanent board by virtue of the fact that the Attorney General is, at most, required to "consult" with the law society prior to making the appointments. St Leonard's suggests that a clear time limit for, and limitations on, the functions of the transitional board be set.

The board also is only required to report to the Attorney General, and given the massive amount of change that is happening at this time, we think public reports on its activities would also be an appropriate inclusion in the legislation.

Turning to some of the areas of coverage, the enumerated areas of coverage in section 13 include mental health law. The previous speaker spoke very eloquently about a variety of aspects concerning mental health issues. We have concerns that access continue for these clients. They are in growing numbers and they are often charged with relatively minor criminal matters and therefore may have trouble accessing full service within legal aid. Special consideration we think must be given at the intake stage of the system to the needs of mental health clients. In general, they are going to require, as previously noted, quite experienced counsel if they're to get fairness at trial and be fully represented.

Turning to clause 13(3)(e), it's a sweeping generalization and it may well be seen to be a catch-all to deal with all manner of civil matters not specifically enumerated. We don't think everything should be set out in the legislation. That's not possible; that wouldn't even be desirable. Legislation needs to be broadly based. But its goal of limiting civil matters we think would be better covered through the policy process of the new corporation rather



than through this kind of phrase. It's more flexible to do it through policy and it's less obviously giving tremendous control into the regulatory process. It's keeping it back at the policy level.

Having said you can't set out every specific concern, there is in fact one area of specific concern that the St Leonard's Society thinks should have been enumerated, and that is the area of representation at parole and corrections hearings. Prisoners in particular have little access to outside resources and they are often significantly limited in their ability to respond to charges laid against them by corrections authorities.

As you've had noted by previous speakers, especially the Elizabeth Fry Society, there have been substantial regional disparities in the availability of legal aid for these clients. We support the position of Elizabeth Fry, which recommends that in section 2 corrections law be added in as an enumerated area.

A final matter we would like to bring to the committee's attention: In the course of announcing the development of a new youth justice strategy, Minister of Justice McLellan has indicated that the new legislation may give provinces an opportunity to recover legal aid payments on behalf of a young person from an adult in a position of responsibility for that youth.

The provisions set out in section 42 of Bill 68 indicate that the ability to contribute of persons responsible for others will be a factor in determining payment arrangements. There's a strong possibility that factors other than the best interests of a youth may be brought to bear on the course of legal representation afforded that young person if access to independent counsel is affected by the potential that an adult can be forced to pay. It's not always the case that adults responsible for the financial welfare of a young person have only the youth's best interests at heart where financial considerations are concerned. For our legal aid system to be most responsible to those who are most vulnerable, including our young people, it's crucial that their legal representation should not be governed by considerations beyond the legalities and the best interests of the youth.

We do consider, as I stated at the beginning, this legislation to be a positive step towards securing a solid resource for legal aid services in Ontario, and we believe that with a few modifications it can, will be and will be seen to be the independent, impartial entity we would all want to provide assistance to Ontarians.

I thank you for your time and would welcome any questions.

**The Chair:** Thank you very much. That allows us just under three minutes per caucus and we begin with the third party.

**Mr Kormos:** What about concern as to the absence of any legislated minimum standard? That is to say, there's nothing in this bill that says what will be the minimal level of services that will be acceptable. Does that bother you?

**Ms White:** Lack of funding always bothers me when it comes to social services that are necessary for the welfare of Ontarians, but I don't think you can legislate money.

**Mr Kormos:** I'm not talking about funding. I'm talking about the fact that the bill does not indicate what constitutes a bare-bones and minimal level of legal aid service. That is to say that if it's related to funding, it means that this government or any subsequent government can gut legal aid by simply defunding it. The corporation will have no legislated argument to make saying, "But the legislation says there has to be at least this much in terms of services."

**Ms White:** I didn't specialize in legislative drafting when I was practising law, but it seems to me it would be very difficult to place into legislation for this kind of corporation those minimum standards. I think we lost the ability to have that when we decided that our law society was no longer going to run legal aid.

**Mr Kormos:** It's been proposed that there perhaps should be some form of binding arbitration that the corporation has access to to determine an adequate level of funding. Would you support that proposition?

**Ms White:** Absolutely.

**Mr Kormos:** That would mean that the government couldn't unilaterally determine the level of funding for legal aid.

**Ms White:** I expect they still could do it unilaterally, but there would be recourse.

**Mr Kormos:** Quite right.

**Ms White:** Precisely.

**Mr Kormos:** What do you say to the argument — and I don't know if you were here — that supports the elimination of — and I appreciate refugee and immigration law is not perhaps as much in the bailiwick of St Leonard's Society as some other areas, but I suggest that you probably have encountered it in one way or another during the course of your various operations across the province. What do you say to the argument, and I don't know if you were here, that supports the elimination, the omission of refugee law? Is that something that concerned you at all during the course of your review of the bill? You know that's been an issue. It's been discussed today, as it has earlier this week.

**Ms White:** It has. I'm sorry, I have no comment on it.

**Mr Kormos:** As to your brief submitted with respect to this, was this the result of any consultation with the ministry by way of briefings from the Ministry of the Attorney General? Did you have access to those?

**Ms White:** Yes, the project team consulted with us on several occasions.

1210

**The Chair:** Now we move the government members.

**Mr Stewart:** Good morning. We meet again. It was pleasant to be invited to your convention when you were in Peterborough. Just a couple of comments. First of all, it's easy to request more money and more funding. I appreciate your concern. I think we all have that same concern. But over the last couple of days we have been hearing that word "accountability." Maybe there has been adequate funding, but the accountability of the funds may not necessarily have been a priority. Any comment on that? Not to put you on the spot, but a lot of people say,

"You're cutting back on funding," but then if you look at it, maybe the funding was there, providing it is used well and accountability is the priority.

**Ms White:** My sense in watching the client base growing and turning to self-representation rather than being able to access government funding for legal aid certificates would suggest that there have been insufficient funds. I've seen very few wealthy criminal lawyers in my day.

**Mr Stewart:** The other one is this corporation being an independent body. How you would see the board being made up? You made the comment that there shouldn't be a quota on lawyers. That may or may not be. I believe that there are a lot of other people out there who have the ability to sit on this board. How do you foresee the makeup of the board?

**Ms White:** I think the composition should be determined by getting the diverse balance that you need to meet the objects of the corporation, so, people skilled in the areas where coverage is needed. Poverty law. Management? Yes, but just not management first. Management is an ancillary to providing the goals of good legal aid. It's not that I think everybody should be a lawyer, heaven forbid. I do think that being a lawyer shouldn't disqualify you. For instance, if I were being considered for this board because of my knowledge of the needs of criminal clients and so forth, would it be appropriate to disqualify me because I'm a member of the Ontario bar? I don't think so.

**The Chair:** We move to the official opposition.

**Ms Castrilli:** I'd like to ask one question and then I'd like to defer to my colleague from the third party to continue his line of questioning, which I thought was very interesting. I don't want to tread on what he was about to say. I will ask you about the appointment process for the board, because you say what's in here is not adequate and you'd like to see something broader, more public. What specifically would you like to see?

**Ms White:** We're talking about the permanent board now. I would like to see the Attorney General not being required to choose just from an extensive list that is provided to him, but rather some more continuation of the balanced role, that the Attorney General, the independent third party and the law society, for instance, have to come to agreement.

**Ms Castrilli:** Would you welcome a legislative process, for instance? Would a committee such as this —

**Ms White:** There are worse ways.

**Mr Kormos:** Again, what was the nature of the consultation with the working group?

**Ms White:** Meetings with the project team; opportunity to make written submissions.

**Mr Kormos:** In response to draft legislation?

**Ms White:** Not in response to draft legislation, no.

**Mr Kormos:** What were the issues of concern to St Leonard's Society when they had those opportunities?

**Ms White:** The same ones we're raising today.

**Mr Kormos:** So your concerns weren't addressed by the working group.

**Ms White:** My concerns have been addressed in part. There's been a better balance in terms of moving towards Legal Aid Ontario. In my brief I say that it is more than simply semantics to call the organization by what will be known by its consumers as its function. There have been steps taken in that direction. I think there has been decided movement towards preservation of pluralistic service delivery. That's really crucial, the need to retain access to individual lawyers as opposed to all of any one model. It's extremely important. I have the same concerns about the block offloading of cases as the previous speaker had.

**Mr Kormos:** Now, McCamus is here this afternoon at 2. I guess we'll be hearing comments directly from him. You're the last presenter this morning. What prompted St Leonard's Society to make this submission today in view of its role in the process as the bill was being prepared?

**Ms White:** To keep on the record the needs of our clients for a fair, impartial, independent legal aid system.

**The Chair:** Thank you very much for coming forward today. We very much appreciate your taking the time.

Just prior to the committee recessing, we've had a request to fill the vacant 2:40 slot. The only way that can be accomplished is if there is unanimous agreement within the committee for that to go forward. Is there unanimous agreement to allow that slot to be filled? So be it.

This committee is recessed until 1400 of the clock today.

*The committee recessed from 1217 to 1402.*

**The Chair:** I call the committee back to order.

#### OSGOODE HALL LAW SCHOOL

**The Chair:** At this time we have a representative from Osgoode Hall Law School. Could you come forward and identify yourself for Hansard. You may begin.

**Mr John McCamus:** Thank you very much. I'm John McCamus. It's a great pleasure for me to appear before this committee and speak to the new legislation on legal aid. As you may know, I had the great fortune and honour of chairing the Ontario Legal Aid Review, and so I feel close to this subject and have been a keen observer of the government's treatment of it in recent months.

I want to begin with a simple and straightforward point. I think this is a very important piece of legislation. I think it is a very strong piece of legislation that is a harbinger of important reform and change in the legal aid system. I am an enthusiastic supporter of it. I congratulate the Attorney General of Ontario for acting on this matter and doing so in a way that I think brings with it the prospect of comprehensive reform of the legal aid system and the solution to many of the problems the system has suffered with over the last several years. It's no exaggeration to say that the legal aid system has been in a crisis state for the last several years. Crises are not pleasant or nice things. Sometimes they produce constructive change, and I think this is a situation of that kind.

I won't go on at length about why I admire this bill. Let me simply say this: In the course of our work on the Ontario legal aid system, the Ontario Legal Aid Review



did an extensive study of the existing system and its problems. We wrote a rather lengthy report, as you may know. In chapter 8 of that report, we tried to draw together all the threads of the analysis that weaved in and out of the various chapters and to prescribe what we saw as a recipe for constructive and dynamic change in the legal aid system. We set it out in the form of 12 propositions.

I won't take you through them in detail, but we talked about the focus of the system being access to justice. We talked about the desirability of building a system based on an assessment of the needs of the clients of the system. We talked about quality of service as an issue and identified some difficulties on that topic. We talked about the difficulty the system has had in setting priorities, and suggested some ways of resolving those difficulties. We talked about the need for accountability. We talked about the need for cost-effectiveness in the delivery of legal aid services.

We talked about the need for the legal aid system to be more innovative in its choice of delivery models, in its balancing and mixing of delivery models to meet the needs of clients of the system. We talked about the need for the legal aid system to have a voice on law reform of the system or reform of the structure of the administration of justice in ways that would relieve the pressure on the legal budget. If there are unnecessary procedures, procedures that could be made more effective, made more efficient, the legal system is in an ideal position to identify those problems. They are in an ideal position to draw them to the attention of the government at the time they are seeking funding, and they can point the government quite directly to some problems that are increasing the need for funding for legal aid. We thought it was important to specifically indicate that that kind of law reform is very much within the mandate of the legal aid plan.

We talked about the desirability of being able to meet the needs of the wide constituency, the types of clients who come before the legal aid system and ways in which the system could respond to those needs. We talked about the need to reform the governance of legal aid and to create a governance structure that would attract public credibility and legitimacy and palpably have the ability to discharge the mandate of the system in the public interest. We talked about funding, we talked about legal aid, we talked about some other topics as well.

When I read through this bill, I find that those principles have been embodied in the legislation in various ways. I am extremely hopeful that the bill sets legal aid on a new and productive course. Certainly, on behalf of the members of the Ontario Legal Aid Review, I can say that we feel very gratified by the care and attention that was taken by the Attorney General in looking at this subject.

I indicated that I have one or two concerns, and I'll be very brief, on the assumption that perhaps the most useful thing we could do would be to have a discussion. I do have one or two reservations. In particular, section 13, as you know, deals with the coverage of the legal aid scheme. I notice with some dismay that while subsection 13(1) does indicate that services shall be provided in the areas of

criminal law, family law, clinic law and mental health law, nothing is said of refugee and immigration law.

As you are well aware, a significant amount of service is being provided at the present time to refugees and new Canadians who have legal problems in refugee and immigration law matters. I am worried that the absence here of a reference to refugee and immigration law may be a harbinger of some reduction or elimination of service in that area. I'm not sure that's the case. It may be that it's part of a strategy on the part of the ministry. I simply don't know. I'm not an insider in the ministry and I'm not privy to such matters.

It may be that it's simply a strategy on the part of the ministry more effectively to negotiate federal funding for refugee and immigration matters. That may be so; I hope that is the case. But to me, it would be a very wrong step in the wrong direction if services in this area were curtailed or eliminated completely.

Only very briefly, Canada has international obligations relating to refugee and immigration matters. We have an obligation to treat people fairly when they enter our country. Canadians probably take that seriously, as a moral obligation at the very least. If we create a system for dealing with refugee claimants that is a complicated legal system, I think we have a moral and arguably an international legal obligation to make appropriate service available to those people. It's easy to forget, and important to remember, that in refugee cases if we make a mistake we may be sending people back to their death in the country of origin. Canadians do not want to have that kind of blood on their hands. I urge you to send a signal to the minister that refugee and immigration law, hopefully, is not being eliminated or reduced in section 13.

#### 1410

A second problem with section 13 is, I think, a drafting error in subsection (3); that's my assumption, at least. In subsection (3), clause (e), the power is created to prescribe certain types of civil cases, and this appears to apply to the entire section. I assume it's meant only to apply to subsection 2, the discretionary areas of service and not subsection 13(1), the mandatory areas of service. I encourage you to suggest that that drafting error, I assume, be attended to.

Finally, and this will be my last point, I understand that it's necessary to have a transitional arrangement, and the transitional arrangements on their face seem very sensible: the creation of a transitional board to take over the operation of the plan until the corporation specified in the statute can be set up. But I'm not entirely confident the arrangements are optimal with respect to the transitional board. The transitional board has, as it must have, quite a bit of power and authority to set priorities to determine policies to run the system.

My concern is that this might go on for quite some period of time and we will lose the advantage of having the new board with its broader range of expertise, etc., arriving at the legal aid corporation and finding essentially a fait accompli with the system up and running, the new experiments conducted and so on and so forth. That may be an unnecessary worry on my part; I hope so. But I'd be

inclined to be careful about this and to stipulate either a fixed period of time during which the transitional board could serve, such as six months or whatever. Or, if the prospect is that it may serve for a longer period of time, take the approach of the statute itself and say the transitional board must include some of the various kinds of people identified in the statutory instruction to the Attorney General: some people with business expertise, some people with expertise in the affairs of low-income people and so on and so forth. I think either of those solutions would be satisfactory. Both might be even better.

Apart from that, I must say, I was very pleased when I read this bill and, as I've said on behalf of the Legal Aid Review, very gratified by its contents.

I'd be happy to discuss any issue.

**The Chair:** Thank you very much. That leaves us three minutes per caucus. We begin with the government members.

**Mr Gerry Martiniuk (Cambridge):** Thank you very much, Mr McCamus. As you can see and as you've noted, the Attorney General has followed most of your recommendations. Therefore, in a sense you're the father of this bill before us.

I am interested in the consultation process by which you arrived at your recommendations, in particular the consultation process with non-lawyers. Could you expand on that?

**Mr McCamus:** We did a variety of things to try to ensure that we did as full a consultation as we could. First of all, particularly in terms non-lawyers, we had some non-lawyers on our panel. We had a distinguished accountant, a distinguished social worker, who were among the small number of people who sat on the Legal Aid Review itself.

Our first act, really, was to create a discussion paper which set out the problems as best we could identify them at that early stage in the work. We sent that discussion paper, together with a request for written feedback, across the province. We blanketed the province with them to legal organizations, to lawyers, to agencies of every kind we could think of that had some contact with people who might need legal aid services. We sent to lists that we got from ministries and from legal groups. We sent an awful lot of those documents out.

We did get a very large number of briefs from lawyers, to be sure, and from lawyers' organizations. We had many briefs from area directors of the legal aid plan. We had briefs from native groups, from groups of every imaginable kind. So we had a lot of written input of that kind.

As well, we conducted a series of public hearings. We didn't have a budget that would enable us to conduct a lengthy progress around the province, but we were able to make, I think, five visits and we had public hearings. On those occasions we visited the courthouses to watch what was going on. We met with lawyers and legal groups, but we also met with citizens in the local community, client groups, social service agencies providing services to people who use legal aid services and so on.

We were very aware of the need to talk not just to lawyers but to others who had a direct interest in the legal

aid system, and we got a lot of very helpful input of that kind.

**Mr Martiniuk:** On behalf of the Honourable Charles Harnick, thank you, and I'm sure you're pleased that your report is not going to end up in some dusty corner, that it's hopefully going to be implemented when it goes before the Legislature.

**Mr McCamus:** Thank you.

**The Chair:** We move to the official opposition.

**Mr David Ramsay (Timiskaming):** Mr McCamus, thank you very much for your presentation.

I was very interested in your remarks in regard to refugee claimants. I just want to get a clarification from you. I think you began your remarks about a legal responsibility that Canada has to refugee claimants, and then went on to speak about, of course, the moral responsibility we have. Is there a responsibility that we have in international law to help refugee claimants in having their status decided?

**Mr McCamus:** I'm not an expert in international law, generally, nor the international treaties relating to refugees in particular. I'm not aware of any documented analysis of the argument that our treaty obligations extend to the provision of legal aid services. It wouldn't surprise me greatly if such an argument could be constructed, but I'm not aware of a law review article or a legal decision in which such an argument is explored at length. I think the moral obligation is really the one that bites in terms of public feeling about this issue.

**Mr Ramsay:** I agree with you on that. Do you think this bill somewhat backs away from our moral obligation to refugee claimants?

**Mr McCamus:** I'm concerned that refugee and immigration law is not in the bill, to be quite frank. Again, my hopeful interpretation of this is that it's an area in which there has been some tension, I think, between the federal government and provincial governments across the country as to what the obligations of the federal government should be.

The federal government having constructed the legal system through which these claims are handled, the provinces have understandably taken the view that the federal government ought to pay for it. The federal government, on the other hand, although it has provided some funding, has also taken the view that administration of justice is a provincial matter and so on. So it is famously, within these circles, a contentious matter, and it may well be that it's not in the bill because the government wants to stay its hand a bit on this until they have what they see as the optimal arrangements. I hope that's the case. I'm assuming it for the moment.

**Mr Ramsay:** Thank you.

**The Chair:** We'll move to the third party.

**Mr Kormos:** Sticking with the area of refugee law, we've had all sorts of positions expressed with respect to it. One expressed this morning is that refugee law is a federal obligation. I know it is legislation that's written federally, and the assumption I'm drawing from saying it's a federal obligation is because this presenter suggested that if the province were to fund legal aid assistance for



refugee claimants' advocacy, it would only be the fulfilment of a moral obligation of the province.

Then we've got the counter-argument that says: "The Criminal Code is federal legislation. The controlled substances act and the Young Offenders Act, the Divorce Act and any number of things that people — many of them are dealt with in federally constructed courts by virtue of federal appointment." Really, I'm just trying to get a handle: Is refugee law distinguishable from other areas of law such that the province can say — and I appreciate the province should be going to the federal government looking for assistance. I appreciate that. But is it distinguishable in such a way that the province could say: "No, it's not our responsibility. Refugee law legal aid is the federal government's responsibility"? Is that a fair conclusion?

**Mr McCamus:** I don't think there's a sound legal argument for saying this is a different animal simply because it's a recent construct of the federal government. As you pointed out, many things that are handled through the responsibilities of the provinces for the administration of justice rest on federal law, the Criminal Code outstandingly among them. But at the time the new, rather complex structure was established, the federal government apparently felt that it had some responsibility to provide funding and it did do so.

There has, as you know, over much of the history of the legal aid system, been a substantial federal contribution to the funding of the scheme. Again, in part in response to the ambiguity of these sorts of points, it's federal law but it's local administration etc. I don't think there is a convincing argument for saying this is a wholly different animal.

1420

**Mr Kormos:** One more thing. I don't know if you've focused on section 22, the appointment of area directors.

**Mr McCamus:** I did not focus my attention on that.

**Mr Kormos:** It was drawn to our attention, and others have noticed it by reading the bill. It speaks of an area director necessarily being a member of the law society, presumably a lawyer, an acting lawyer rather than a student lawyer, a student member or an honorary member. It goes on to say, "An area director shall not render legal services...." Not "legal aid services" but "legal services." I just wonder if it's perhaps unfair, in view of the fact that you haven't focused on that in your review of the legislation, to expect a legal aid director not to render legal services, not just legal aid services but any legal services. Similarly, is it critical that legal aid directors be lawyers?

**Mr McCamus:** I haven't thought about this previously, but I'm happy to give you my reaction off the top of my head, as it were. It rather depends on how the plan is going to be organized. If we're retaining the same number of area offices, many of them in small communities where you have part-time directors, it doesn't seem realistic to say that they wouldn't be able to practice law at the same time. They do at the present time. It's likely to be a practical thing to allow that in the future. If, on the other hand, the idea is to collapse the number of area offices and have full-time legal aid directors, that's a very different set of

facts. The section does, of course, confer some discretion on the board to authorize practice, and perhaps that renders the problem a bit innocuous. Presumably, reason will prevail in matters of this kind.

As to whether the area director must be a lawyer, there are some obvious advantages to having lawyers, especially in smaller communities. I think one of the problems for the legal aid plan is to secure the cooperation of the local bar and to get people to take cases that are not very well remunerated, that may involve some travel, if we're talking about the north, and so on and so forth. As we travelled around the north, and we had only a couple of stops, we found that that was a serious problem. An area director said to us, "It's very important that I'm a member of the bar because I can go to Peter Kormos and say, 'We really need your help on this,' and they're more likely to respond to a fellow practitioner."

Do you really need legal expertise? I think there's an argument for saying you could well have someone with some other kind of expertise — management expertise, for example — in a large area. There's a very successful area director in the plan, whose name I won't mention. She is a lawyer, but even more importantly, she has a PhD in business administration and she's an expert in change management. When you talk to her about what is a rather large area, she talks about management issues, not legal issues.

**The Chair:** Thank you very much for your presentation today. We very much appreciate your coming forward.

We have another representative from Osgoode Hall Law School. If you could come forward and identify yourself for Hansard, we would appreciate it. You may begin.

**Mr Fred Zemans:** My name is Fred Zemans. I'm a member of the faculty at Osgoode Hall Law School and, along with my colleague Patrick Monahan, received a grant from the Donner Canadian Foundation several years ago to do a study of the crisis of legal aid in Ontario. Our study was completed shortly before that of my colleague John McCamus, from whom you just heard. I do hope that your research officer has obtained our two-volume study. The second volume includes contributions from scholars from various parts of the world.

I have a number of comments to make. Like John McCamus, I feel that this is a very important step forward for the province of Ontario. It brings into legislation recommendations going back over 20 years ago to a commission chaired by Mr Justice Osler, who recommended the fundamental basis of removing the administration of the plan from the law society and setting up an independent legal corporation. This was also recommended in our study. We are very happy that so many of the recommendations that were in both the McCamus study and the Zemans and Monahan study have found their way into the legislation.

We are particularly happy that the new legislation will see a much more diverse group of Ontarians involved in the administration of the plan. We particularly see legal aid as a plan that provides a unique service to low-income Ontarians. We are happy that in the criteria for appoint-



ment there is an indication that we will look to recipients of legal aid and those knowledgeable about the problems of the poor for appointment to the board. We would like to see the appointment process clarified slightly to indicate specifically that the individuals who were clients or are representatives of low-income citizens be given positions on the board. In fact, in our study we recommended that two individuals from low-income communities sit on the board.

Also, in our study we recommended a slightly lower number of lawyers on the board. We think that lawyers are important and bring an important perspective to the board, but it seems to me that one of the reasons we are making this change is in recognition of the fact that lawyers are the providers of the service, that they are serving a community of citizens who need to receive innovative and well-managed services. Innovation and management are not the exclusive domain of the legal profession, and that is why it is so important that appropriate appointments be made to the board.

As with the presentation of my colleague, I have concerns with respect to the transitional board: the vagueness of its appointment and the length of its appointment. I urge the committee to put a clear delineation on the length of time that the board will sit. I think it is vague, at the very best, in the current legislation. Secondly, there is no provision as to the composition of the transitional board.

My own background is as the founding director of Parkdale Community Legal Services, so I come with a very strong commitment to the mixed delivery system which has developed in Ontario over the last 25 years, a subject that I have written about extensively internationally. And I want to let the committee know, if they're not already aware of it, that Ontario is looked to as one of the outstanding providers of legal aid services throughout the world.

Our report recommended an integration of the clinic system into the mainstream of the legal aid plan, with appropriate protections for the clinic system, and I believe the legislation effectively does that. But I am very concerned that an area of provision of legal services which actually originated in the clinic system, that is, provision of legal services to immigrants and refugees, is so conspicuously absent in the new legislation. It is not articulated as one of the areas for provision of legal services. In fact, there is a clause which indicates that this area will be reviewed in two years. I have the number of the section — 1430

**Mr Kormos:** Sixty-five.

**Mr Zemans:** Sixty-five, exactly.

With respect to Mr Kormos's previous question, Canada is a signatory of the Geneva Protocol — legislation that was introduced after the Second World War in response to the Holocaust — which holds us legally responsible to accept refugees, as a society which holds itself out as a leader in the international community and a leader that is committed to due process, and that seems to me the fundamental issue here. The Ontario Legal Aid Act was introduced in 1967 because we believed that no individual who was facing significant legal proceedings

should be unrepresented. Just as it was indicated in criminal justice that we would not see any person who is facing incarceration unrepresented, similarly it is totally inappropriate for legislation to be introduced where refugees may face deportation and return to countries where they potentially face death without appropriate legal representation.

I mentioned earlier that the clinic system has been involved in representation of immigrants going back to 1973-74. Immigration and refugee law has been an area of concentration for Parkdale Community Legal Services. As you know, Parkdale has served for over 25 years as a teaching setting for students of Osgoode Hall Law School and also, in more recent years, students of the University of Toronto Law School. We have over 1,000 graduates of that program who are practising law throughout this province and throughout Canada. That clinic has recently been recognized by the Law Society of Upper Canada for its contribution to social justice in Ontario. I mention Parkdale because of the fact that throughout its history, it has had a full-time staff lawyer and a complement of six students and a paralegal who worked in the area of immigration and refugee law. I do think this is conspicuous by its absence in the current legislation.

In conclusion, I want to say how happy I am that this legislation is coming forward. I think the test of the legislation is going to be the quality of appointments made to the board of directors, the composition of that board, their backgrounds and their commitment to the problems of low-income people. I reiterate the point I made before, that we have come a long way in our attitude towards professional groups, whether they be lawyers, doctors or other professionals, and we believe very strongly that they are stakeholders in the delivery of services to the community. And it is imperative that the recipients of those services play a significant role in the determination of the type of services, how they are provided and in what circumstances.

One of the major issues we underlined in our study and which is carried forward in the legislation, is to ensure that we have diversity of services. The private bar is an important contributor, salaried lawyers are possibilities in many areas, the clinics are important, and we hope that in Ontario we would begin to experiment with franchising which, although not mentioned in the legislation, would seem to be a strong possibility within the provisions of the new act. Thank you.

**The Chair:** Thank you very much. That allows us three minutes per caucus. We begin with the official opposition.

**Ms Castrilli:** Thank you very much, Professor Zemans, for being here. In fact, what you've had to say about refugees is more than borne out. Some of our research that has been presented here indicates clearly that a condition relating to the status of refugees imposes a general obligation on Canada to provide at least the same level of service for refugees as for other citizens in Canada. Of course you're familiar with the Singh case and what it says about the type of services that might be provided. While not an absolute right, they're still there as guideposts.



You've posed so many issues here today, but I'd like to ask you in particular about the transitional stage. I know you've been very outspoken on that issue, and we've heard from others as well that there's a real danger that what the transition team will do will set the course for legal aid in Ontario, and yet very little is said about the appointment process and who these individuals might be. I wonder if you might elaborate a little on that.

**Mr Zemans:** It seems to me that the reason the legislation includes a transitional board is in recognition of the fact that we have a plan that has been ongoing for some 30 years and there has to be some way of switching gears. But that seems to be all we would hope they would do; that is, be there for a very short period of time and then allow the leadership, the development of the new process, to be in the new board.

One is concerned in reading the legislation — for example, when you see section 10, which sets out the power of the transitional board and their ability to assign priorities and establish policy — that they're going to be doing the work one would hope the new board, the staff, is going to set into place, and which appropriate research and evaluation procedures would be set in place so we can monitor these processes. One of the great concerns about the existing plan has been the limitations on trying to evaluate the process on an ongoing basis. One would hope that would be one of the types of enterprises that the new board take on.

My own feeling is that we would hope they do a quick and relatively straightforward job rather than come in and create a framework which the new board is going to in effect have to unravel or, more likely, live with over a lengthy period of time.

**The Chair:** Thank you very much.

**Ms Castrilli:** I'd love to ask you about criteria.

**The Chair:** We'll move to the third party.

**Mr Kormos:** I refer you to section 16, and I'm talking about eligibility for legal aid services and in particular the consideration in this bill of the requirement of an application fee, clause 16(1)(d), "if...he or she pays the application fee." It doesn't indicate that there will be one, but it certainly contemplates one. Do you want to comment on that? You didn't address that in your initial comments, and once again —

**Mr Zemans:** I have no hesitation in commenting on it. I think an application fee for individuals who are applying for legal aid is reprehensible, and I don't think it should be contemplated in the legislation. We saw an application fee under the memorandum of understanding period that we have just come out of, which was finally removed. We saw a significant drop in the number of application fees and we saw, particularly being affected by the period of legal aid administration that was just completed, a significant drop in the availability of legal services for low-income women.

I think we have to recognize that it was low-income women who were penalized by the cutback in funding and by the administration of the memorandum of understanding. One aspect of that was application fees; the other was

clearly that the tap was significantly turned down. I feel very strongly that we should not have an application fee, and if I were drafting the legislation, I would certainly not want to give the corporation the authority to introduce one.

**Mr Kormos:** Thank you, sir.

You talk about franchising. Was this the prospect of having counsel bid en bloc? If it is, we've had some comment on that in anticipation of it creating an HMO-type of situation where if a lawyer or a law office bids on X number of cases, then the handling of those cases is going to depend on where their bid fell — in the high range, the low range, the mid-range — the HMO syndrome. If that's what you meant, would you respond to that?

**Mr Zemans:** Franchising is a process of delivering legal services that has been initiated in the United Kingdom since legal services were taken away from the law society there in the late 1980s. Basically it recognizes that in legal aid we have to be looking at creative models for delivering legal services, not just the current case-by-case approach to legal services.

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Some call franchising a Marks and Spencer model of delivering legal services. By that, you set in certain kinds of quality controls and you monitor the quality of legal services. Say in St Catharines you decide that you have a certain number of legal services you're going to provide in the civil area or the criminal area. You're going to put out a bid for those services and, yes, a law firm or group of lawyers will come together to put in a bid for it, just as people put in bids to provide other public services. It means, number one, that you're potentially going to get some savings in public resources, in terms of the provision, and that you have some monitoring of the quality of services delivered. One of the problems with legal aid in Ontario has been that we have never had any kind of evaluation of the quality of services delivered.

**The Chair:** We'll move to the government members.

**Mr Bob Wood (London South):** You made reference to integration of the clinics into the mainstream of legal aid. You said that you thought this bill largely accomplishes that. I wonder if you could tell us how you think it accomplishes it and whether you think more needs to be done.

**Mr Zemans:** The previous legislation had, to some extent, two solitudes. We had the mainstream of the plan, which was the certificate plan run by area directors under the management of the law society, and we had the clinic funding committee, which was established in the late 1970s after Mr Justice Grange's report, basically to provide funding for the clinics, and they were funded separately by the Legislature specifically for the clinic system.

We now have a system whereby the clinic system comes under the management of the new board of directors, with a clinic committee responsible to the board of governors for its management and with some protection with respect to its funding. None the less, the clinics are protected because we have continued with the model of community involvement and participation by having community boards of directors.



My sense is that the legislation goes a long way to integrating the clinics into the overall scheme. Our report suggested another step and that was some type of regional committee whereby there would be, in various parts of Ontario parallel to the court system, committees which would look at the unique needs of northern Ontario, eastern Ontario, Toronto and other areas, whereby there would be some attempt to develop legal services programs specific to those particular areas.

**Mr Bob Wood:** I'd like to touch on a different issue very briefly. We've heard some discussion at these hearings of case management under the certificate system. I wonder if you thought that was important, and if you do, could you give us a brief outline of how you'd recommend the new corporation go about case management?

**Mr Zemans:** It's really not an issue I've thought about specifically. I think it goes to the point I was making before, and that is that hopefully the new corporation will look generally at the most effective way to deliver services and attempt to monitor to make sure we are providing the most effective and cost-efficient legal services we possibly can to the public.

**The Chair:** Thank you very much for coming forward with your presentation today.

SHEILA McKENNA

**The Chair:** We call our next presenter, Ms McKenna. Could you come forward and correctly state your name for Hansard. Thank you for coming, and you may begin.

**Ms Sheila McKenna:** Thank you very much for the opportunity to speak to you. When I came here today, I didn't expect to speak to you. I came perhaps as some other people in Ontario do. They are representing themselves in the legal system and haven't been able to obtain the legal representation they need. So I came to this event, as I go to different things, in order to try to inform myself, to try to understand the situation in which I find myself. When I heard the presentations this morning, it seemed to me that you were interested in hearing the experiences of individuals who are in need of legal aid and that perhaps it would be useful for me to speak to you.

I have to tell you a little about my legal situation in order for you to understand what I want to highlight. I'm in, I believe, a very unusual situation. I'm trying to get divorced from my husband. It's a very protracted divorce. During the many years we've been separated, he has become ill and has come under the guardianship of the Ontario public guardian and trustee. I feel as if I'm trying to get divorced from the Attorney General's department. It's not a situation anyone wants to find themselves in.

People often don't take me for a poor person. I am a genuine poor person. I'm a member of a single-parent family comprised of myself and my daughter, who was sitting here earlier. We live on about \$10,000 a year, none of which comes from public sources. My daughter, of whom I'm extremely proud, is attending a private school. She took her pick from two full scholarships at high school this year, each of them worth more than the total we live on. Again, a fairly unusual situation. She turns all the

statistics for children of divorce and separated families upside down.

Since we're such quiet-living, church-going pillars of the community, you might think we would have an easy path through the system. I'm very sorry to tell you that we are having anything but. I don't want to embarrass the colleagues of the Attorney General by telling you too much about my views of how his department is conducting itself. What I have on paper speaks for itself. I get written, printed-up papers calling me to court under threat of losing my home and they don't turn up. They call me down there and they don't turn up.

It's been going on for years. It's having a terrible effect on my health. My doctor considers me to be disabled. A day like this when I'm out and about and active and maybe seem like the rest of you, comes about as a result of days of rest and days of physical pain, which I'm now experiencing, and of course days of preparation as an ordinary person trying to understand the situation I'm in.

I've lost track a little bit. I want to make sure I mention to you a few things I think are very important to what you're looking at.

1450

My name is on the deed to my home, and so when I applied for legal aid — and I did have legal aid for a time — I had to sign a lien against my home. I'm in the position where either I let the other side take my property away from me unjustly in the court or my property is taken from me to pay the legal fees. It's completely a Catch-22 situation. That being the case, the only thing I can do is attempt to represent myself. Because if I apply for legal aid again, I'll have to sign a lien. That way, I'm losing my property anyway. It's worth very little, it's falling down. I haven't heard anyone else use this term, but my daughter and I consider ourselves, me especially and her, thank God, less so, to be victims of legal abuse. We are victims of the legal system being used as an instrument of abuse and we have many of the characteristics of people who are abused.

I'm very discomfited — of course I'm not familiar with the legislation that's been in existence, I'm not familiar with the proposal — but I heard this morning that there's a possibility that the Attorney General may appoint the board of legal aid. What does that do to somebody like me? The other side of my divorce is represented by a branch of the Attorney General's department. Then, if I were to apply for legal aid, it would be accountable to the Attorney General.

Where do I ever reach some accountability that does not depend upon the Attorney General? In case you're thinking that seeking accountability from the Attorney General is something that goes smoothly and well, let me tell you, when I have been able to write letters to try and explain what's going wrong here and to try and reach a listening ear, the replies I receive do not match up in any sense to the points that I've put forward. You would think they were addressing another person in another situation. In my experience, trying to get accountability from one office is a very, very risky situation to put people in.



I don't know to what extent you've looked at providing legal aid for children. As well as everything else — and I'm very proud that my daughter is doing well — I seem to have stumbled into being shock absorbers for her so that, although she's in the middle of all this, it's not impacting on her so badly that it's affecting her performance. She's doing real well. But she has needs and interests in this situation which, as you can appreciate, I'm completely unable to look after, try as I may. I believe that the Ontario public guardian and trustee, from what I gather, is obliged to consult next of kin on legal issues, on relocation on various matters. Even though the PG&T would make the decision, I believe they consult the people around the person.

In our situation they're treating his closest relative as an enemy and an adversary and trying to pull the home out from under her on the basis of incorrect figures. In 18 months' time when she turns 18, she will legally be her father's next of kin. She needs, we need, expert legal representation, and as far as I'm aware, as things stand, if I apply again for legal aid, another lien will be put against my home, and the money that they're trying to take away from me unjustly in the court will be taken away from me by legal aid.

By the way, I think it's a great idea putting liens on people's homes in order to give them legal aid. It enables people who have an asset but who need to have legal work done in the short term to have a means of doing so. But there comes a point at which, if you are poor, that is no longer appropriate. For people in circumstances like ours, where the property is no longer worth very much, it's falling down, it's crumbling, and where our income is so low, it's just counterproductive. It means there isn't any justice for us.

I hope this helps you in your deliberations about legal aid.

**The Chair:** Thank you very much. That allows us two and a half minutes per caucus, and we begin with the third party.

**Mr Kormos:** That's not very much time, Chair.

**The Chair:** That is not a choice of mine.

**Mr Kormos:** Lord knows, you want to have dialogue here but two and a half minutes is nowhere near enough to do it.

Is this a divorce or is this a division of property?

**Ms McKenna:** Both.

**Mr Kormos:** OK. Your partner, your spouse, his legal interests are being represented by the public guardian because there's no individual who's prepared to take on or in a position to take on that position, to act as his guardian as appointed by the court —

*Interjection.*

**Mr Kormos:** Ad litem. Am I correct there? There's no other close family member that's —

*Interjection.*

**Mr Kormos:** Ah, yes, appointment as committee. That's right, guardian ad litem is with children in lawsuits. I'm just testing the legal knowledge of a couple of civil experts here. So there's nobody who has been in a position

to be appointed as committee, as Mr Wood accurately points out?

**Ms McKenna:** When he was first taken ill, I was thought to be his closest relative.

**Mr Kormos:** But you're into this matrimonial dispute with him now?

**Ms McKenna:** We had separated for nine years so they thought that was a de facto divorce.

**Mr Kormos:** And you don't have any lawyer now?

**Ms McKenna:** I don't have a lawyer, no.

**Mr Kormos:** And your husband has a lawyer because that lawyer has been retained by the public guardian.

**Ms McKenna:** My husband seems to have plenty of lawyers as far as I can tell. I've received letters from all kinds of directions. Yes, he most certainly has a lawyer.

**Mr Kormos:** I trust Mr Wood may ask you questions or he may help flesh this out for me. I trust that means that the public guardian has to be less conciliatory than a lawyer might be were a person not in a position of being advocated for on behalf of the public guardian. The public guardian isn't in a position to sit down and say, "Look, this may be the law but this is the best thing for everybody concerned," and give you exclusive possession etc.

**Ms McKenna:** They haven't been at all conciliatory. I don't know how to characterize it. I feel as if I'm in the hands of —

**Mr Kormos:** You've got the two remaining members of the Ontario Crime Control Commission here. Here's your chance to get them to intervene.

**Ms McKenna:** I have called the police to ask if this could be considered fraud.

**Mr Kormos:** Police are not going to get involved in it. You know that. These are the people right here. Thank you kindly for coming by.

**The Chair:** Now we'll move to the government members.

**Mr Bob Wood:** I want to assure you, by the way, I practised law for 26 years and these are among the most difficult people to deal with. You're not the only person in the province that's had that experience. However, what I wanted to ask you were a couple of points. Number one is, when legal aid was involved in it, was there ever any attempt at mediation of this situation?

**Ms McKenna:** I think so, yes. I don't know how you mediate with people who aren't in any way truthful.

**Mr Bob Wood:** What I'm asking is this: Was there ever an attempt to sit down with you, whoever was representing you at the time and whoever was representing the —

**Ms McKenna:** Yes.

**Mr Bob Wood:** And did any result flow from that?

**Ms McKenna:** No, they've never looked at the full story and they've never formed a truthful idea of what has taken place.

**Mr Bob Wood:** Were you given an opportunity to present your point of view at this session?

**Ms McKenna:** Not very much came out. No, I don't feel that very much of what was needed to be taken into consideration came out.

**Mr Bob Wood:** Do you feel you were given an opportunity to present your side of the situation?

**Ms McKenna:** Not adequately, no.

**Mr Bob Wood:** Did you make any attempt to tell them that, or did that not really happen?

**Ms McKenna:** Yes, I think those who had been involved with it would say that I've been explaining that I haven't felt heard.

**Mr Bob Wood:** Maybe you have misunderstood. Did you have a third party sit down with lawyers for the official guardian and you to say, "Is there a way we can settle this matter?" Did you ever have a session like that where —

**Ms McKenna:** I've made an offer to settle.

**Mr Bob Wood:** Before you answer that, though, what I'm trying to find out, did you ever have a third party sit down with you and the lawyers for husband's estate and say, "Is there a way we can settle it?"

**Ms McKenna:** I think so, yes.

1500

**Mr Bob Wood:** And you didn't feel you got a chance to explain your point of view when that happened?

**Ms McKenna:** You see, any time this has been considered it has been viewed on a false basis. The assumption seems to be that because they're a professional office, the way they present the issue is probably more or less reliable. My experience is that it isn't at all reliable. When attempts have been made to — I wouldn't say that very sincere or very wholehearted attempts have been made to resolve it. I made an offer that would have lost me what I cannot afford to lose, but I made an offer to try and bring this nightmare to an end. I didn't even receive a reply.

**The Chair:** We now move to the official opposition.

**Mr Ramsay:** Thank you, Ms McKenna, for bringing your case forward today and making this presentation. I know it must have been difficult for you. I really do appreciate it because most of the people who come before us are giving us the theoretical view of the bill and how, in theoretical terms, it can be improved, as all of us around this table want to do, but you bring to this committee a real situation, how a citizen has been dealing in the past with legal aid. I think, for all of us, it's very helpful to have anecdotal evidence as to how legal aid does work. I think it gives us a better idea how we can improve this bill to make it serve you better, so thank you very much.

**The Chair:** Thank you very much for coming forward today. We very much appreciate your taking the time.

#### LAWRENCE HEIGHTS COMMUNITY HEALTH CENTRE

**The Chair:** I think we can now move to the 3:20 appointment. If the representative of the Lawrence Heights Community Health Centre could come forward and identify yourself for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Ms Sherry Phillips:** My name is Sherry Phillips. I am currently the director of community health promotion

programs at the Lawrence Heights Community Health Centre. For those of you who don't know where that is, it's in Toronto at the Lawrence Avenue-Allen Expressway intersection, in and around that area.

I also was a member of the review panel for the Ontario legal aid plan with Professor McCamus. Basically, I'm here to present some very brief statements on Bill 68, certainly in support of the bill as it represents many of the recommendations that we came up with during the review.

One of the key highlights for me in the bill and in the recommendations that we compiled was a recommendation to create an independent body to administer legal aid and the fact that under the bill such a body is going to be created. I think that's a very good thing. The composition of the board remains to be seen. Having heard now that there are both pros and cons to the Attorney General appointing members of that board, whether they're lawyers or not, I think what's really important is the commitment of the individuals to the process and to ensuring that legal aid continues to be accessible to the people who really need it.

Second, in terms of why I want to support the bill and the passing of the bill is the fact that it also continues to provide strength and support to legal clinics, which I think are a really key piece in ensuring that people who need access to the justice system get it. As we heard when we were doing the review, that doesn't always happen when people are issued certificates, but certainly in my working experiences in community health centres as well as hearing from many of my colleagues at other centres and other community-based agencies, the work of community legal clinics is very important, so it's great that that is going to continue. From what I have heard from my colleagues in legal clinics, they are also quite pleased with the bill. I think you've already heard from the association of legal clinics.

The issue of how the bill treats immigrants and refugees is problematic, notwithstanding provision 65 and the fact that there is still a commitment for two years. I think, as Professor McCamus and Professor Zemans already stated, the reality of our commitment as a country to the needs of new immigrants and refugees is prevalent, it's timely and it's growing. That is the harsh reality. For us to think otherwise is unrealistic and it's unfair, I think, to the growth of our country, which is relatively small. I don't really need to sit here and try to convince you of that. I'm sure that you all are quite aware of what is going on with the many difficulties facing newcomers in Canada today, and particularly in Ontario, specifically in Toronto.

If I can plead for anything this afternoon, I think it would be that this bill be amended to include much stronger provisions for access to legal aid for immigrants and refugees. What we heard as well from the previous presenter is equally important. What I was hearing from that person — and I'm sorry, I can't remember her name — was a frustration around being forced to access the legal aid system and being frustrated for various reasons, but feeling also that she was powerless to do anything



about it and also powerless to take it anywhere. That's certainly something that we heard when we were doing this review throughout Ontario, where many recipients of legal aid or many people who were eligible to receive legal aid did receive it and for various reasons had difficulties with the providers, particularly the lawyers, who had accepted the certificates.

We heard a number of different scenarios around problems. What we also heard, though, was that the recipients, the clients, often felt quite frustrated that if there were problems, if they felt that the work that was undertaken by their lawyers was inadequate or could have been done differently, there was really no place to take that. As a quick aside, we also heard from a number of other lawyers who commented on the same issue. There was certainly perceived to be a role for that by the law society, but speaking as a layperson, a non-lawyer, that doesn't seem to be happening much.

I know that during the review, our panel discussed that quite a number of times. There is no real provision in Bill 68 to address that issue, so that's certainly something I would want to see happening in any amendments to this bill before it's passed. I think it's really important. One of the key issues around legal aid is access, and providing access without ensuring the integrity of that access I think is a bit meaningless.

That's really all I wanted to say. Thank you.

**The Chair:** That allows us four minutes per caucus for questions and answers, and we begin with the government members.

1510

**Mr Stewart:** I've only been on the committee the last couple of days but I keep hearing about the situation of access to funding through refugee status and immigrant status. I'm going to play a wee bit of the devil's advocate on this now: We have X amount of dollars to go to legal aid and we have to control them because accountability and so on maybe do not seem to have run rampant in the past in this particular field. How do you decide whether the refugee should get the dollars for legal aid or the person who has lived in this country and paid taxes? Where do we draw the line with this thing? I mean no disrespect to either side. That's not what I'm talking about. How do we draw the line on this thing when we have only so many dollars to do it?

Some things concern me a wee bit. I know that there are refugees who come in who, if they go back, possibly will be killed or whatever, but there are other refugees who seem to be coming in and out all the time. We pay extremely big dollars because the first words they say are, "If you deport me back, I'm going to be killed." I guess we should think of these things at the start as well, that some of them have been going back and forth for a number of years. How do we solve that problem and differentiate between those who have paid the bills and those who haven't?

**Ms Phillips:** It's a very good point. I think that realistically the issue is quite systemic, that the bill and providing dollars to support refugees once they're in Canada aren't

the answer either. But we have to pay attention to it wherever we can. Certainly, not paying attention to it in this area is critical. Definitely, the process that new immigrants and refugees face before they even come to this country, in relation to what they know about Canada and why they would even make a decision to come here, is another area that's also lacking. It needs far more scrutiny. People need to be far more informed, realistically informed.

The reality is, if we just take new immigrants — I know a little bit about the immigration process — our Immigration Act provides stipulations around who can enter the country and who can't. We also have a number of scenarios around which countries are more acceptable than others and so on and so forth. There is without a doubt a discretionary process that's in place.

The harsh side of it, though, is that there are many newcomers here who are quite skilled, who are quite capable but are unable to find meaningful employment, are unable to integrate as well as they should, as well as we expect them to. There are many people who don't want to be on the welfare system, who don't want to be on the backs of the general public. That is a real misnomer. The percentage of people who are actually "taking advantage of the system" is realistically quite low in comparison. Of concern, however, are the people who for language reasons, for cultural reasons — coming from cultures that are dramatically different — get caught in a syndrome of wanting desperately to fit in, to integrate, to work, to be educated, to raise their children in a way that's meaningful for them and that has integrity, but find themselves in a system that is quite complicated.

Realistically our system, in comparison to many throughout the world, is quite complicated. It's not a straightforward system. The English and French-language systems are also quite complex. When you work with newcomers and with people whose first language is not English, if you're an English-as-a-first-language speaker you very quickly realize how difficult what we take for granted, speaking English, is for many people.

**The Chair:** We now move to the official opposition.

**Ms Castrilli:** Thank you for your patience, because my patience was tried, with all due respect to the members opposite. There is a clear obligation under international law, under our own domestic law. We cannot treat refugees — people in need, people who've escaped horrendous situations — any differently from the way we treat our own citizens. That's obviously clear.

**Mr Stewart:** Talk to your buddies in Ottawa.

**Ms Castrilli:** This is a point we've been coming back to day after day after day, many individuals have spoken about the injustice of it, but even if there weren't laws and conventions that clearly require us to deal in the best possible fashion with individuals who are disadvantaged in that way, we heard Professor McCamus himself, the author of the report that this legislation is ostensibly modelled upon, say that there's a moral obligation. Forget the legal obligation; there's a moral obligation.

I don't think it's up to us to determine which individuals are more worthy than others to have access to the law. I really do appreciate your patience in all this, because it seems to me that one of the goals of this renewal of legal aid is to ensure equality of access, that we're not saying that some people ought to be able to have access to the very best lawyers and get to court in a timely fashion simply because their pocketbook is a lot fatter than other people's. That's why we have a legal aid system: to equalize the field in Canada.

I think what we have to do as legislators, and I think this was the point you were speaking to, is make sure that the playing field is fair, that we're not creating two classes of citizens when it comes to justice, because individuals in poverty sometimes have greater needs than people who have a nice fat bank account.

I appreciate your eloquence here today. It speaks volumes for where we must be going. You've said it all extremely well, and I thank you.

**The Chair:** We move to the third party.

**Mr Kormos:** Thank you, Ms Phillips. I'm old enough that I've heard that theme several times during the course of my lifetime. The theme today was: "Is it fair that foreigners, people who just arrived in this country" — unspoken: "maybe illegally" and "maybe not the same colour as me" — "should be able to access a taxpayer-supported legal aid system for refugee purposes at the risk of maybe displacing a true-blue, Canadian-born blueblood standing in the line?" You see, I've heard that before. I've heard it in other contexts: "The foreigners are taking your jobs."

I'm old enough to remember that. It goes back to the 1950s, when I was a kid, and some of the great waves of immigration were happening in this country from in that case southern Europe, and then in the later 1950s from eastern Europe, after the Hungarian revolution. We shouldn't forget the names that were given to those people because some of the same nomenclature is given to the new Canadians of 1998.

I know that the Reform Party has made some very specific statements, with a wink and a nod, about things like freezing immigration, and about these refugees and the mythology of — do you understand? I'm not saying this to you. I'm obviously speaking to these members of the Legislature across.

Do you understand that — I hope you do — the people who come here as refugees have abandoned everything they've owned? They leave every single possession they've ever acquired. They leave their friends. They leave family. Sometimes they leave those families at great risk from the prevailing powers. To talk about the so-called mythology of the refugee who flies back and forth, back and forth — they come here at great risk to themselves and at great risk to their futures. They destroy their past. They abandon their past.

If you've had the occasion to read any of the affidavits that are filed on behalf of refugee claimants or to speak to some of those claimants — I don't care what part of the world they come from — and to hear some of the atrocities they've been subjected to, and understand why they

come to Canada at great risk, seeking some modest justice, I'm not sure you and the other Reform Party spokespeople in this province and in this country would have the same perspective.

1520

I just find it hard, Ms Phillips, to equate rights with, let's say, citizenship or rights with longevity. My parents were, as children, economic refugees from Europe. They weren't political refugees; they were economic refugees as children. It's incredible to think that how many generations you've had in this country should determine what rights you have or what services you can access. We either provide services for people who are in this country or we don't; and we either have human rights, which aren't dependent upon your citizenship or your nationality or ethnicity or your cultural background or your colour, or we don't have human rights. You either accept and endorse human rights or you abandon them. To try to pit one group of people — it happened in Ottawa yesterday when one of your members — you know who he was, the member from Ottawa-Rideau — told a group of women in the audience, "What would you rather have: family law, a legal aid certificate, or certificates for these refugees?" trying to pit one group against another. That was a reprehensible effort to divide the community and it smacked of racism and it was accommodating and condescending to the people at whom it was directed.

**Mr Stewart:** He didn't say that at all. Look at Hansard and don't say that when he's not here to defend himself. He did not say it and you know that.

**Mr Kormos:** You either believe in human rights or you don't. I've got a feeling, based on what you had to say earlier today, that you don't believe in human rights.

**Mr Stewart:** Absolutely, I do.

**Mr Kormos:** What you've said is racist and it's condescending and it's unacceptable in this country.

**The Chair:** Order, please. Thank you, sir. Thank you, Mr Kormos.

**Mr Stewart:** You go and talk to your buddies in Ottawa.

**Mr Kormos:** I'm talking to you. You're the one making the racist comments here today. You're the one making the racist comments. Put on your white hood. Burn a cross.

**The Chair:** Order, please.

Thank you very much for coming forward today. We very much appreciate your taking the time.

**Ms Phillips:** Can I have one last word? In reality, we're all refugees.

**Mr Stewart:** Absolutely.

## AFRICAN CANADIAN LEGAL CLINIC

### BLACK LAW STUDENTS' ASSOCIATION OF CANADA

**The Chair:** We're going to call forward the four o'clock presentation today. If the representatives of the African Canadian Legal Clinic could come forward and



identify yourselves for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Ms Michelle Williams:** Good afternoon. My name is Michelle Williams. I'm policy researcher and analyst with the African Canadian Legal Clinic. With me is Margaret Parsons, who's the executive director of the African Canadian Legal Clinic. Camille Lee, is the president of the Black Law Students' Association of Canada, was unable to attend today, so we'll also be speaking on behalf of that organization.

The African Canadian Legal Clinic is one of 72 legal aid clinics in Ontario and has a province-wide mandate. The ACLC was established to address discrimination in the justice system, education, employment, housing, health and other spheres of Canadian society. The ACLC participated in the legal aid review process and worked very hard to ensure that the concerns of racialized groups were brought to the attention of the legal aid review panel. We did extensive consultations in Hamilton, Ottawa, Toronto and Windsor. We also organized an open community meeting with John McCamus and other members of the review panel to provide accessibility to the review process itself.

A bit about the Black Law Students' Association of Canada: They are a national organization formed in 1991 to promote an accessible legal system and support the professional needs and goals of black law students. They have commissioned and completed a number of studies on access to justice, legal education and the legal profession.

Today we'd like to touch on three main points that form the basis of our recommendations to the committee. First is our general support of the Legal Aid Services Act and it's overall purpose to promote access to justice throughout Ontario for low-income individuals.

Second, we want to touch on the changing demographics of Ontario and the implications of those changes.

Finally, we want to touch on access to justice and the racialization of poverty.

As mentioned, we the ACLC and the Black Law Students' Association of Canada would like to express our general support for the Legal Aid Services Act and the comprehensive and open process that was used in the development of the act. We helped communities access and participate in the preparation of the McCamus report and we're pleased that much of the philosophy and recommendations of the report are reflected in the new act. In particular, we commend the recognition of the importance of clinic law as part of the foundation of the legal aid system, and the open and inclusive definition of clinic law. We also commend the recognition that clinic law needs to be community-based in order to be most effective, and the government's commitment to independent governance and ongoing funding of legal aid services.

The second point that we want to highlight for the committee today is the changing demographics of Ontario, or perhaps it's more accurate to say the changed demographics of Ontario. The latest national census indicates that 1.7 million individuals identify themselves as mem-

bers of a visible minority in Ontario, which is 16% of the province's total population.

Indeed, Ontario has more than half of Canada's visible minority population. African Canadians are the third-largest visible minority population in Canada and comprised over one fifth of Ontarians who identified themselves as members of visible minorities in the 1996 national census. This large percentage of racialized groups in Ontario has implications for the provision of legal aid services. In understanding the needs of racialized groups, it's imperative that the government be attuned to what is known as the "racialization of poverty." In order to give real effect to the principle of promoting equal access to justice, we must examine the material condition and experience of racialized peoples and the degree to which racism contributes to hardship and poverty.

That racism continues is borne out by numerous reports which document discrimination in Canadian society and the Canadian legal system itself. A provincial report released in 1992 talked about the root of the problem being anti-black racism. The existence of anti-black racism has also been recognized by the Ontario Court of Appeal in the cases of *Parks v Wilson*, and most recently by the Supreme Court of Canada in the case of *Williams*, which was a groundbreaking legal analysis of the nature of racism and its insidious effects. We've seen a quite immediate demonstration of that in the report that was released by Judge Trafford yesterday, which was covered extensively in the news. It talked about what's happening to people in the criminal justice system and the degree to which racism is playing a role.

The Hon Roy McMurtry, Chief Justice of Ontario, was the keynote speaker at the first annual general meeting of the Association of Community Legal Clinics of Ontario earlier this year. During his speech he quoted the following observation:

"Poor people are not like rich people without money. Poor people are always bumping into sharp legal things.

"As we appreciate better now than we did perhaps then, the wounds from these sharp legal things are disproportionately felt. Given the systemic discrimination found in many of our institutions, these wounds are particularly suffered by racial and other minorities, women, aboriginal people, and those with literacy, learning and other disabilities.

"What distinguishes the clinics from other access-to-justice initiatives is their ability to respond in a community-specific way to these needs."

I'd like to turn it over now to Margaret Parsons.

**Ms Margaret Parsons:** Discrimination in the spheres of employment, education, housing and services imposes additional legal burdens that must be addressed by survivors of racism. It also creates economic barriers which make it difficult for people to afford private legal services. Consequently, the provision of legal aid services must reflect the particular needs that arise as a result of the racialization of poverty.

The ACLC's province-wide consultations on the issue of legal aid gave rise to important suggestions in various



areas of law. In particular, members of the public wanted access to legal services in the areas of immigration and refugee law, wrongful dismissal and other civil litigation matters such as personal injury, more public legal education and the imposition of contingency fees. Each of these areas is discussed in more detail in our written submission. For the purposes of the current presentation, we would like to highlight concerns about immigration and refugee legal services.

More than four of every 10 immigrants who arrived in Canada in the past five years settled in the Toronto area. In fact, one tenth of the area's total population has arrived since 1991. The inaccessibility of our legal system is intensified in immigration and refugee matters as there are often language and cultural barriers that make it impossible for new Canadians to effectively interact with our legal system. The deficiency in translation and interpretation services, along with a lack of cultural sensitivity on the part of some lawyers and adjudicators, leads to many credible refugee claims being denied, with the consequent return of the refugee to a potentially life-threatening situation.

Cuts in services to immigrants have also imposed increased barriers. Further, the liberty interests at stake as a result of a detention or deportation order are as severe as those used to consider whether criminal certificates should be issued.

The McCamus report recognized the need for expanded immigration and refugee legal aid services, and the ACLC and the Black Law Students' Association of Canada recommend that a long-term commitment be made to expanded immigration and refugee legal services.

The reality of who Ontarians are and what their needs are obviously has implications for the provision of legal service in Ontario. It is imperative that proposed legal services be scrutinized to ensure that they promote access to justice and will meet the needs of the most vulnerable Ontarians, who include historically disadvantaged racialized groups such as the African Canadian community.

**1530**

This leads to the five main recommendations of the African Canadian Legal Clinic and the Black Law Students' Association of Canada. The ACLC and the Black Law Students' Association of Canada endorse the recommendations made to the committee by the Association of Community Legal Clinics of Ontario and want to highlight and elaborate upon those recommendations.

First, it is crucial that an independent, transparent and open selection process be adopted for the selection of the board of directors of the new legal aid corporation. Limits should be placed on the tenure and power of the transitional board, and an open process should be used for the selection of transitional board members as well.

Secondly, in order to ensure that the diverse needs of Ontarians are properly met, it is imperative that the board itself and board committees have a diverse membership. There must be people who understand and can articulate the particular barriers and challenges faced by members of Ontario's racialized communities. It is imperative that the

board and committees respond to the racialization of poverty and the unique needs of racialized groups and immigrants.

Thirdly, a related recommendation is the need to maintain a community-based approach to determining the needs of low-income and disadvantaged Ontarians. Independent community boards are absolutely essential to a responsive and effective clinic system.

Fourth, the restriction on the provision of civil law services may prove to be a barrier to an open and flexible system. Therefore, the ACLC and the Black Law Students' Association of Canada support the recommendation that clause 13(3)(e) be removed from the act.

Finally, immigration and refugee law services should be included in the act and specific funding references removed. This is crucial to the overall functioning of this province, particularly in light of the changing demographics. Immigrants and refugees make up a considerable portion of the disadvantaged and low-income community in Ontario. Their needs and ability to access immigration legal services is critical to their quality of life and ability to fully participate in Canadian society.

Access to legal aid and proper legal representation are inextricably entwined with the issue of access to justice. Access to justice is crucial to a well-functioning society. It is important that the new corporation be adequately funded to allow it to meet its challenge of providing high-quality legal services and that the subject funds flow free from political interference or consideration.

Overall, the new act is commendable. It is now up to the government to ensure that the implementation of the act reflects the general purpose of the act, which is access to justice. We must also remember that an integral component of access to justice is equality and freedom from discrimination.

**The Chair:** That allows us two and a half minutes per caucus. We begin with the official opposition.

**Ms Castrilli:** Thanks very much. I think you packed a lot into your presentation today. One thing that struck me as you were talking, and you may recall this: An additional report that was issued after some years of study, which you didn't mention but that I think is very instructive for this committee, was the two-volume report which documented the systemic discrimination in the justice system, and is something that I hope everybody on this committee notes.

The McCamus report addressed some of your concerns. I just want to read some of that for you, because we were hoping that a lot of what you said would be in the bill. On page 65 of that report Professor McCamus says:

"While racial and ethnic minorities experience many of the same problems that other groups of low-income Ontarians face, the issue of race and ethnicity often exacerbates their difficulties. For example, issues of discrimination can factor prominently in the areas of housing and employment, or, indeed, the administration of justice itself."

One would have thought that some of that would be front and centre in this legislation. While I agree with you



that this is a good start, it remains just a shell unless you actually say some things very forcefully and back them up with funding. That's really the issue here. You can have a lot of pretty words, but if you don't have the funding and if your ideological agenda is to get out of some areas of legal aid, then this kind of legislation might in fact lead us down that road.

We've heard many people talk about the importance of including immigration and refugee law, and there's been plenty of argument here as to why it's not only a requirement by law but also human rights, and it's a moral obligation of Canadians to do that. What we see here, however — and I asked the law society this this morning. I said to them, "Why didn't you fight vigorously to have some of these areas included?" They said, "With a capped system, you have to make some choices," and, if I may paraphrase or edit what they said, the priority might be to get out of some of those areas.

I want to thank you for your presentation. I think you pointed out why it's absolutely critical that we don't get out of those areas, because it is an issue of equality and access and justice. We can't have a two-tier level of justice. Justice ought not to be determined by the colour of your skin, your gender or the size of your wallet.

**The Chair:** We move to the third party.

**Mr Kormos:** You, like so many others, have come here and said that generally the bill is a good thing — setting up an arm's-length corporation etc. I've said that from day one as well. But if you feel strongly, as I do, about the omission of refugee and immigration law, among other things, and if you suspect, as I do, that it isn't just posturing so this government can negotiate with the feds over funding, that it's really about — you know what I suspect. Look, let's face it. You know what's going on out there. You spoke to it today when you talked about the community, in the broadest sense.

There's been a whole lot of fear and anger whipped up over the phenomenon of people seeking refugee status. Listen to the radio talk shows. You hear them. You know it's out there. Look at the response from some elements in the community. We recently had some people seeking refugee status from the republic of Slovakia. These people were Romanies, known colloquially as gypsies. Again, look at the incredible antipathy, the hatred and the mythology that was built on once again.

If you suspect, as I do, that the omission of refugee law is, quite frankly, an exploitation for political gain of that sentiment that sadly is out there; if you're concerned, as I am, about the lack of guaranteed funding for the whole plan, then you'll understand why I may not vote for the legislation, why I will feel compelled to vote against it. How else do I express my disapproval of the omission of those very important things?

I know it's going to pass. There are enough Tories to make it pass. I know that. They'll do as they're told. They'll be whipped. They'll vote as they're told to vote. How else do I express my strong concern about the lack of guaranteed funding? That was already spoken to. At the end of the day, it's all about sufficient funds. And the

government controls that, not the corporation. How else do I express my disapproval, other than saying no?

With the omission of consideration of refugee law, among other things, I'm going to vote against this, because I don't want to be responsible — I don't want to crawl into bed with the government on the issue of, let's say, the omission of refugee law. Do you understand why I am probably going to vote against the bill?

**The Chair:** We now move to the government members.

**Mr Dave Boushy (Sarnia):** I agree with you that Ontario has an obligation to immigration and refugees, and I agree with the NDP representative. At least I know where they stand. However, the laws for immigration and refugees come under the federal law. Are you aware of that?

*Interjections*

**The Chair:** Order, please.

1540

**Mr Boushy:** Are you aware that the federal Liberals cut funding to legal aid by 75%? If you're aware of that, are you going to lobby the federal government for more funding or at least their portion that they cut off legal aid?

**Ms Williams:** Certainly, there are many areas of law that involve both federal and provincial jurisdiction. Criminal law is another area in some ways. Obviously, that's part of the federal system that we have. We also have people who have needs on the ground, here in Ontario, that involve immigration and refugee services under legal aid, which is provincial jurisdiction. We always work with any level of government that is willing to work with us to further the needs of the people we represent and who we work with in legal services.

The fact that immigration and refugee law falls in part under federal legislation is not a reason to essentially limit immigration and refugee services at a provincial level.

**Mr Boushy:** I didn't say that. I started right off the bat by saying we have an obligation as an Ontario government. But you also should know that the Liberal federal government has cut its portion of the funding to legal aid by 75%. Are you going to lobby the federal government?

**Ms Williams:** We're quite aware of the various cuts —

**Mr Boushy:** Yes or no?

**Ms Williams:** — that happen.

**Ms Parsons:** Let's take what you're saying as accurate, that they've cut the funding. Legal services are still being provided in all the other areas that legal aid funding is provided to: in the area of criminal justice, in the area of housing and all those areas. So I don't see why immigration is targeted as the area that's going to feel the brunt of the cuts from the government.

**The Chair:** Thank you very much for coming forward today. We very much appreciate your presentation today.

**Ms Castrilli:** Point of order, Chair: I'd like it very clearly reported in the proceedings that legal aid is a provincial responsibility and not a federal responsibility.

**The Chair:** Mr Kormos.

**Mr Kormos:** If I may pose a question to the parliamentary assistant — because I'm not beyond criticizing

the federal government as well as this government simultaneously. In all seriousness, could we have some hard numbers on what was in effect the federal contribution to overall legal aid funding and, please, because we've got to get some specific data on when there were cuts in that by virtue of downloading by the federal government to the province, the same way the province has downloaded on to municipalities in Ontario, was it selective downloading or was it across-the-board downloading? Do you understand what I'm saying, Chair? As these participants just commented, it's important to know: Is the reduction in support by the federal government for legal aid across the board or is it reduced more significantly in areas of, let's say, refugee law than in other areas of law. Because we're having some real —

**The Chair:** I'm sorry, the time is over.

**Mr Kormos:** She could have my time, Chair.

**The Chair:** You've made a request to the parliamentary assistant to look into the breakdown of the transfer payments. I think it's very clear to the parliamentary assistant.

**Ms Parsons:** I'm not sure whether the question was, was 75% cut to immigration or to legal aid overall?

**The Chair:** Thank you.

#### THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 525

**The Chair:** Would the representative of the Ontario Public Service Employees Union, local 525, come forward. If you could identify yourself for Hansard prior to starting, we would appreciate it. Thank you for coming. You may begin.

**Mr Bart Poesiat:** Thank you, Mr Chair. My name is Bart Poesiat, president of Ontario Public Service Employees Union, local 525. Local 525 represents community legal workers, researchers, educators and administrators in seven community legal clinics in the Toronto area, as well as workers in the Ontario legal aid plan office. Obviously, we've got years of experience as front-line workers dealing with poverty law issues.

You have our brief in front of you, I hope. I'll just point out some salient points so there will be more time for questions.

First of all, we'd like to point out that we like some of the provisions in the act. Obviously, we like the independent, or what we hope is going to be independent, Ontario Legal Aid Corp. We like the act's recognition of the importance of poverty law and legal aid in general. We like the emphasis that we see has been placed on the importance of clinic law and legal clinics. We also like the inclusion of mental health law in the areas covered by legal aid, which was not there before.

Having said that, we have some concerns, which undoubtedly you've heard over and over again but we still have to point them out. First, we have some concerns about the independence of the board of the Ontario Legal Aid Corp, specifically the selection process. We notice that the appointees are by the Attorney General, with only

input from the law society. There's very little input from other organizations. We make a strong suggestion that in order to produce an independent board of directors, there is more input from community groups, poverty groups, unions and so on.

Our second concern is the transitional board. There are very few provisions on the limits of tenure and power of the board that is supposed to make the transition from the system we have now to the new system. Again, we don't read in the act presently about an open selection process for that transitional team. We would like to see some due process in that and some time limits and some limits on the tenure, because when a transition is made is a critical time.

Our third concern is the access to quality services. There is some contradiction in the way this is stated in the act. Section 1 of the act states that:

"The purpose...is to promote access to justice throughout Ontario for low-income individuals by means of,

"(a) providing consistently high quality legal aid services in a cost-effective and efficient manner...."

We agree with that. But then in subsections 4 (a) and (b), the order is reversed and the phrase and weighting to cost-effectiveness comes first.

We recommend that the object remain one of providing accessible and high-quality care and services, in the first place, and then in a cost-effective manner. We think that the emphasis is important, and we prefer section 1 to section 4.

Our fourth concern is the role of communities. Nowhere in the act presently are there explicit mechanisms for community participation. The way the system has evolved, especially the clinic system, is through extensive input from the low-income communities, whether it's low-income tenants, refugees, immigrants or psychiatric survivors, we need a role for the communities serviced by the act. We need input from the communities, in our opinion.

Our fifth concern is the matter of the regulations. In many instances this act refers to regulations — "as prescribed by regulations." The regulations are not there. It's very difficult at this moment to comment on specific sections of the act without seeing the regulations. We strongly recommend that when the regulations come in, the low-income community as well as service providers are consulted on the regulations as well.

Our sixth concern is the quality assurance program that is mentioned in the act. We hope that the quality assurance mechanisms that will be set up will not interfere with the confidentiality of clients. Again, what better quality assurance is there than full participation by the people to whom these services relate. In other words, once again we urge that there be community participation in the quality assurance and that in the program one hears from the communities.

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Concern number seven has been raised here again and again, no doubt — I just came in and heard it — and that's the commitment of the act to immigration and refugee services. Obviously we understand the that refugees



and immigration as a whole are a federal jurisdiction, and that the feds have cut back on transfer payments overall and not particularly to legal aid. But the whole area of immigration and refugees is such an important matter, and refugees and immigrants on very low income can't just become a political football between the feds and the province. I know that this needs to be worked out. I know that in the meantime there's some commitment for two years. But we are worried about that, and that has been repeated many times here.

Another concern we have is section 38, which deals with the powers of the board. Section 38 says that, "If a clinic fails to comply with this Act...the board...of the corporation may direct the clinic to do anything that the board of directors of the corporation considers appropriate." We submit that such powers are immense and could readily be used inappropriately to interfere with the operations of a clinic without the clinic having recourse to an appeal mechanism. There is nothing there, and these are very broad powers.

Another concern is the provision for paralegals. We don't necessarily object to that, but on the certificate side, if the corporation is going to fund paralegals — I think we all know that there are paralegal services out there, for instance for immigration and for workers' compensation, where the paralegals know very little. The whole field of paralegals is very poorly regulated. We don't necessarily object to paralegals inside the clinics like myself. We are well regulated because we're under the supervision of lawyers. So I'm not saying you have to watch us. Watch the paralegals out there in these little companies that promise pie in the sky to people coming to Canada. Currently there is no regulation for those paralegals. We're a little nervous about that.

Finally, we have some puzzlement about subsection 13(3), which says the corporation is not to provide services in specified areas: "in proceedings wholly or partly in respect of a defamation" — we understand that — and "in relator actions." But then in clause (d) it says, "in proceedings relating to any election..." In my case, for instance, I work quite a bit with the homeless, and one of the things we would like to do is organize the homeless to get on the voters' list to vote. That kind of thing would be a legitimate area, but this section might preclude that. So we're kind of worried about that section. Also, clause (e), "in prescribed areas of civil law, for prescribed types of civil cases or for prescribed types of civil proceedings," is a very strong section and we don't know what that means. That could mean very much. So we're kind of nervous about that.

That ends our concerns. Overall, as we say, we like the inclusion of clinic law and poverty law and we thank you very much for making this submission.

**The Chair:** That allows us three minutes per caucus. We begin with the third party.

**Mr Kormos:** I like the inclusion of clinic law and poverty law too. But at the end of the day, if it isn't adequately funded, Bill 68 becomes just another bill, just a collection of pages in the Revised Statutes of Ontario. I'm

fearful that this government has no real commitment to funding it, because they wouldn't put it in the legislation. They wouldn't put a minimum standard for provision of legal aid in the legislation. They wouldn't put, as was suggested by one presenter, some form of binding arbitration to determine the amount of funding in the legislation. They won't even guarantee stable funding for the next three years. They do for clinic systems but not for the overall funding of legal aid. Very interesting.

Do you have the same fears about the lack of commitment to sustaining the legal aid system?

**Mr Poesiat:** We have some concerns. We read the act as being a stable commitment for three years, but obviously the amount of commitment in terms of dollars and cents is not mentioned in the act.

**Mr Kormos:** You're right: stable commitment to the clinic end for three years but not to the certificate end.

**Mr Poesiat:** We read it as the whole system. Thank you for pointing that out.

**Mr Kormos:** I'm going to do it again: Subsection 65(5) guarantees stable funding for the clinic program for three years, and 65(6) guarantees stable funding for refugee for two years. There's no guarantee of global stable funding. That's the kicker here.

The lawyers who have been here say, "They're reinforcing the private bar as the conduit of the delivery system for family and criminal law." I say, "But they haven't made even a three-year commitment to funding." Mind you, the Attorney General, Charlie Harnick — if you only knew him the way I do — has promised to provide stable funding. But I say to the Attorney General: If you're prepared to promise it, why won't you put it in the bill? Because I think the Attorney General lies. He lied about the family support plan.

*Interjections.*

**Mr Kormos:** Well, he did.

**The Chair:** Order, please. I again ask you to withdraw those remarks.

**Mr Kormos:** No, thank you.

The Attorney General lied about the family support plan. I'm not prepared to accept his mere say-so about global funding for the legal aid system.

I agree with you. I support the principle of an arm's-length corporation running it. We have some concerns about the nature of the board — and you've talked about that — and the tenure. At the end of the day, this government, or quite frankly any subsequent government, can do through the back door what they wouldn't dare do through the front door. They can merely defund it. They can wring it dry. That's what scares the daylights out of me. They're prepared to do that with refugee law, immigration, and you've made reference to that. I appreciate your coming here today, because you've given a perspective of many of the workers in the system.

I don't think I'm going to be voting for it.

**The Chair:** We now move to the government members.

**Mr Martiniuk:** I look forward to the day when Mr Kormos makes up his mind.

Thank you very much, sir, for your presentation here today.

**Mr Kormos:** On a point of order, Mr Chair: I've been unwavering in my accusation and my firm position that Charlie Harnick is a liar.

**The Chair:** That is not a point of order.

**Mr Martiniuk:** It's unfortunate, sir, that you have to see a person act unparliamentary, knowing it's unparliamentary, but he continues to act in that fashion. It really hurts some of the good points he makes because he becomes irrelevant when he acts that way.

**Mr Kormos:** What was that word?

**Mr Martiniuk:** "Irrelevant."

**Mr Kormos:** Hansard would have had a hard time with it the first time around.

**Mr Martiniuk:** And the other word was "unparliamentary."

In any event, the Attorney General has indicated that a memorandum of understanding will be signed with the new corporation to guarantee funding for the plan for the next three years. I think the Attorney General also recognizes the importance of immigration and refugee, because he has also guaranteed, right in the statute — the only government to ever do it; Mr Kormos's government refused to do that. He's given two years' guaranteed funding.

The question I'd really like to ask you at this moment — and I think the commitment in the act and the Attorney General's commitment to clinics are self-evident. I assume your clinic, for instance, has a board of directors. How would you envision the input you're suggesting from the clients being filtered through the board of directors? Are you talking about committees? How would you —

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**Mr Poesiat:** If it comes to the selection of directors, we suggest that various organizations such as poverty groups, unions and the faith community have input. But also, as a permanent input, we suggest — and we've pointed it out in our brief — a permanent committee, with maybe a three-year turnover, of representatives or appointees from anti-poverty groups, unions, maybe labour councils, the faith community and so on and so forth.

**Mr Martiniuk:** I don't mean to pick on your group, but you're familiar with it. Do you have subcommittees for input at the present time, or do you feel that that has to be institutionalized?

**Mr Poesiat:** At present, community legal clinics usually have community boards or significant representation on those boards from community members. But in this there is no precedent, because this is an independent corporation. We're saying that there is no provision in the act for a mechanism for input from the communities we serve, both the legal aid certificate side and the clinic side. So I'm talking about there being a permanent mechanism where there can be representatives from various community groups in an advisory role from the community advising the board as well as the clinics.

**The Chair:** We move to the official opposition.

**Ms Castrilli:** I truly appreciate your comments. We've not had a lot of input from labour during our hearings, so it's really great to have you here.

There are so many things I could ask, but I want to focus on one in particular that you set out in your brief, because I think it's an important point I'd like you to elaborate on, and that is what you call the arbitrary powers of the board under section 38. I agree with you that the section is so broadly worded that the corporation could do virtually whatever it wants, and there's no recourse in this legislation at this point. I'm wondering what your advice is as to how you might draft some more reasonable powers for the corporation. What would be reasonable for you?

**Mr Poesiat:** Basically, section 38 talks about when the clinic is in trouble. Unfortunately, local 525 has been involved in scenarios like that; for instance, the defunding of Metro Tenant Legal Services. What we would like to see is a provision where, when things go wrong in a clinic, there is some kind of monitoring provision before drastic things happen, that a board can then take some steps without closing down the clinic, and that in the steps a board can take in a case like that, there is due process, there is an appeal mechanism and there are mechanisms for bringing that particular organization back on line. So we would like to see some specific steps when a clinic is not performing well or whatever, and for what reasons, what the criteria are and what the steps are before it's gets closed down.

**Ms Castrilli:** One thing that has been troubling me throughout these hearings, and even before, when we had a look at this bill, is that it really provides a structure but, as you pointed out with respect to this section, there isn't a lot of substance about how you're actually going to deal with some of the problems that may arise. In particular, the issue of funding is very difficult for us and for many of the participants here.

Two suggestions have been made to provide some stability of funding, and I wonder if you might quickly comment on them. There's very little here that's guaranteed, and even the guarantees are really not guarantees at all. One is that there be a three-year rolling budget with respect to legal aid generally, not just clinic and refugee, so that you never come to the end of the three years. You're always setting a new budget. The other is that the memorandum of understanding that must be entered into, assuming that the Attorney General and the corporation can't enter into an agreement — for whatever reason, there are disputes — rather than leaving it solely at the discretion of the government to determine how much money it will put it in, that there be a provision that it go to binding arbitration, so that there's a reasonableness, hopefully, in the amount of money that will be allocated. What do you think? Good or not good?

**The Chair:** Thank you very much. We very much appreciate you —

**Ms Castrilli:** Let him finish, please.

**Mr Poesiat:** I think both suggestions are good ones.



**The Chair:** Thank you very much for coming forward with your presentation today. We very much appreciate that.

The committee will take a five minute recess at this time.

*The committee recessed from 1606 to 1613.*

#### FAMILY LAWYERS' ASSOCIATION

**The Chair:** I call the committee back to order.

**Mr Martiniuk:** Mr Chairman, we had a cancellation today and we have a little bit of time. The Family Lawyers' Association is here and would like to present, although they are not scheduled on today's agenda. I'd ask for unanimous consent.

**The Chair:** Is there unanimous consent to allow the family law association to present? Agreed. I ask the representatives of the family law association to come forward and identify themselves for Hansard.

**Mr Martiniuk:** I didn't mean to take them out of order. I just meant we should hear from them today.

**The Chair:** The other presenters are not ready at this time. As we're back, we might as well call them forward.

Just so you know, there's a total time allocated of 20 minutes. At the conclusion of any presentation you may have, the time is divided equally between the three caucuses for questions and answers. Thank you for coming. You may begin.

**Ms Mary Reilly:** Thank you. My name's Mary Reilly. I'm chair of the Family Lawyers' Association.

**Ms Elizabeth Ennis:** My name is Elizabeth Ennis. I'm vice-chair of the Family Lawyers' Association.

**Ms Susan Switch:** My name's Susan Switch. I'm the past chair of the Family Lawyers' Association. I think I've been elected to do the speaking today.

First of all, I don't know what other people's presentations have been like, but just off the top, I'd like to say that we have some very positive things to say about this legislation. We're actually quite pleased with it.

Perhaps I can tell you something about our organization. We're called the Family Lawyers' Association. We've been in operation since 1994. Most of us practise family law in Toronto. Our organization was started as a result of the legal aid crisis that happened during that period of time. We've been involved in giving presentations and liaising with legal aid and with the government over the last few years. We made submissions to the McCamus commission and those types of things.

One of the things I would like to say is that from our point of view, there are some very positive things about the legislation, particularly in the fact that family law is acknowledged as well as criminal and immigration and the clinics, and in terms of the fact that the legislation refers to having a foundation of the judicare model, which has always been, in our submission, extremely important.

I don't know if you've heard any information about this, but obviously there's some flexibility built in. They're experimenting at the present time with family law clinics in various areas of the province at the present time,

including Toronto. It is clearly indicated in the legislation that the private bar is going to be the primary service model for legal aid services in Ontario. We've always submitted that it's important that the judicare model be the primary delivery model for legal aid in Ontario, for all kinds of reasons, including freedom of choice of counsel, having a flexible and diverse legal talent pool, quality of service, and the fact that the overhead and the costs are actually absorbed by the profession as opposed to being paid for out of the public purse.

We do have some very positive comments to be made on the fact that there is provision made right in the legislation about having advisory boards and advisory boards in various areas of law, including the family law area. That's something we felt very gratified about in the last couple of years, in the sense that we've been meeting with the legal aid committee of the law society and also with the legal aid personnel in terms of giving them our input from the front lines, so to speak, about what's going on in terms of providing these legal services for modest-income people in Ontario.

There are a couple of things we have concerns about, though, in terms of the provision of legal aid services in family law. In section 2, they refer to the definition of "service provider" including "a person, other than a lawyer, who provides legal aid services, including a paralegal and a mediator, and then it goes on to refer to the fact that "A paralegal shall not provide legal aid services except under the supervision of a lawyer." In our submission, obviously there has to be a lot of concern about how paralegals are used in the context of legal aid services. Perhaps that needs to be defined a little more carefully. I'm not sure it's clear what "supervision" means.

It's important to note that paralegals are, at this point in any event, unregulated. They don't have any standards for their education or their continuing education or discipline. They're not officers of the court. They can't appear in Ontario Court General Division. Our concern that we'd like to express is that there needs to be very careful consideration of how they're going to be used. Perhaps "supervision" needs to be defined, in the sense that it's not going to be just someone who opens up a law office and has 15 paralegals farmed out to run around to the different provincial courts acting on their own. That's the kind of work we do, that's the kind of work we've been trained to do, and we like to think we provide good service for our clients in that regard. That's one of the concerns we have.

#### 1620

The only other concern that we really have is in terms of the composition of the board. There's reference there to the fact that a majority of the board must be non-lawyers. In our submission, in some ways it seems as though it's perhaps a negative way of putting that. Presumably, there may be an argument by some about the fact that this is going to be a program that provides legal services and obviously also provides payment for lawyers and that perhaps other people should be administering that.

It's very clear from the composition of the board indicated in the legislation that they're concerned about hav-

ing business people on that board and people with interests in other areas. That's of great concern, but perhaps some consideration should be made to the fact that the best people should be appointed, as opposed to weighting it so that the majority have to be non-lawyers. Perhaps the best people should be chosen.

Basically, that's all we had to say, other than the fact that we feel optimistic about this legislation and about the new regime and the fact that this is going to provide good service for our clients. I'm sure you're well aware of the difficulties our clients have had, especially in the last four years, with the instability. There was a point in time when very few family law clients in Ontario were being serviced by legal aid. The system seems to have been somewhat stabilized. The provision for having budgets decided well in advance so that people know what to expect is very admirable. Those would be my submissions.

**The Chair:** Thank you very much. That allows us approximately four minutes per caucus for questions and answers. We begin with the government members.

**Mr Bob Wood:** Before I put my question, I should draw to your attention the fact that I've already said I think the area of family law tends to be underemphasized right now in the plan. There can be some quite simple things that can be quite helpful, like an undefended divorce, which isn't covered much by the plan these days.

However, there's one thing I'd like to touch on and seek your comments on. The problem, in my experience in these cases, is not so much determining the legal issues as it is the animus between the parties and getting them to do what they're going to end up ultimately doing anyway. I think there's a lot of potential in mediation and that sort of thing to try and reduce the pain to the parties and the cost to the system. Do you think there are ways of reducing the costs and making the system work better, and if so, what are they?

**Ms Switch:** There are always ways of reducing costs in systems. I think mediation is really important. At the present time, it's considered more and more in terms of trying to deal with any kind of family law case, whether people are on legal aid or whether they just can't afford to litigate. On the other hand, it's important to note that a lot of times in family law cases, if there's a disparity of power between the parties, if there has been abuse, that type of thing, mediation might not necessarily be appropriate. That's one of the concerns. Family lawyers always have concerns about having, say, mandatory mediation because of the concern that perhaps there's an imbalance of power in a particular couple and the parties don't necessarily feel comfortable being in the same room talking about the issue. But certainly, yes, I think most family lawyers feel that mediation, if possible, is a very positive thing to be doing.

**Mr Bob Wood:** If you were making a recommendation to the new corporation, what would be the system? Where would you introduce mediation into the system?

**Ms Switch:** We do have mediation in the system. Our —

**Mr Bob Wood:** Sorry to interrupt, but what I'm saying is, at what point would you introduce mediation? When the case starts? Partway through? Towards the end? All three?

**Ms Switch:** I think most people would probably feel that mediation can't be introduced too soon in the system. Sometimes when people separate, especially if there's a great deal of animosity, they need time to settle in and come to grips with what's happened and with the changes in their lives. But that's certainly an individual thing.

There are all kinds of things that have recently been put in the court system in terms of public education. The General Division court has a mandatory public education regime now where the parties have to go and listen to a lawyer and social worker and watch a movie before they are allowed to proceed with their litigation, that type of thing.

In terms of cost-cutting, though, I would like to say that throughout the last of couple of years family lawyers have been very reasonable in suggesting cuts. When there was the cash-flow problem at the law society with legal aid, we voluntarily agreed to cut back certain services at that time. That's always been something we have dealt with.

One of the things that happened that I think is important to realize about legal aid: Two years ago, family law legal aid was cut so drastically in this province that people were really underserved. There are a lot of cases — it's fine to talk about mediation and all these other things — where people need to go to court and they need proper representation, and they just weren't getting it.

**Ms Castrilli:** It's good to have the family bar here. Yesterday we heard from some of the women who have had some difficulty with the system, the Association of Separated and Divorced Women. They told us some very tragic tales.

I want to pick up on the point that you just made, that legal aid for family law really has been cut dramatically. Professor McCamus pointed that out very clearly. In fiscal year 1993-94, there were some 65,700 family law certificates that were issued. That dropped, in 1996-97, to 29,000. That's the decrease you find. However, the plan only issued about 14,000 of those. The figures are very drastic. Then certificates of course were only available for first-priority matters, which left a whole lot of women — mostly women — in great difficulty. On top of that, if memory serves — I don't have the figures in front of me — the amount of time you could spend on any individual case went down from about 16 to five or something along those lines.

**Ms Switch:** I think it was 6.5.

**Ms Castrilli:** Thank you. Still, you know what it takes to negotiate in your business, and 6.5 hours probably just gets people to talk to you, let alone do any substantive work, which is the reality you face.

When I see that this legislation says it will guarantee funding only in certain areas, clinic and refugee and immigration law, for three years and two years, respectively, but that funding in any event is frozen at the current



levels, I wonder why you have such confidence that it's going to get any better in family law.

**Ms Switch:** I suppose, optimistically, I was looking at that from the other side. They were basically saying, "You're going to have this funding for this amount of time." We're named in the legislation. I guess we were assuming that we're a big part of the budget. They're going to negotiate their budget — I believe it's a five-year time frame — and we're going to be a big part of the budget, as we have been for quite a few years.

1630

**Ms Castrilli:** But what you have right now is that 83% of all certificates are issued in criminal cases. There is nothing in this legislation that says family law is going to be on a par with other areas of the law. It just says funding generally for legal aid is frozen at current levels, so you can understand why I'm a little perplexed by the position you take. I would love to be optimistic, because I know the work you do is stressful and it takes long hours. It's unlike any other areas of the law because you're dealing with people's raw emotions and you're dealing in some very difficult situations. I just don't see in this legislation anything that would give me comfort that your job is going to be made any easier.

I should say, by the way, that is also the position of this organization that we met yesterday. They were very concerned about the fact that there is so little money allocated now and it only goes to priority-one cases. There's really no possibility at the moment as the legislation is written, without guarantees of additional funding, that it would change in any way.

**Ms Reilly:** It's not just priority-one cases, though. There was an opening up of the legal aid tariffs in the last year, so there are more cases being funded at the moment.

**Ms Castrilli:** I agree, but it's minimal compared to —

**The Chair:** Thank you very much, Ms Castrilli. We now move to the third party.

**Mr Kormos:** I'm glad you were able to make it, because this is the last day. This is it. There's one more group after you and that's it. Then it comes down to the nitty-gritty: clause-by-clause.

You talk about the corporation negotiating with the government. Far be it from me to try to tell you how you do your business, but from what I know about negotiating, negotiations are only really negotiations when both sides have some power or some clout. Right? If the corporation, though, has no inherent power or clout, that bothers me as to how much negotiating there really is. I read the act, and I read it and I read it. Sure, the corporation will present a budget, but this government or the next government — whoever Mike Harris's successor is going to be — will determine the amount of money the corporation is going to get.

It's been suggested that maybe there should be some binding arbitration process whereby if the corporation feels that the amount of monies offered by the government are inadequate to maintain even a minimum level of legal aid services, there should be a means whereby they can litigate it, go to binding arbitration.

But at the end of the day, when a plan is stuck for money, they can reduce the hourly rate. There's a point at which — what is it, 67 bucks an hour?

**Ms Ennis:** Yes, that's the basic rate.

**Mr Kormos:** Down in Welland, where I come from, you're barely doing it, running an office, at 67 bucks an hour. In Toronto, I don't know how you do it.

**Ms Switch:** Try doing it in Toronto.

**Mr Kormos:** Exactly. You can raise the eligibility standards so fewer people get a certificate; you can delist services as such, as has been done; or you can control the maximum number of hours, which has the same impact as reducing the hourly rate. I can't think of any more ways you do it. So I'm asking you, which one of those means, or which combination of them, are you suggesting that this or a subsequent government should use in an underfunded system?

**Ms Switch:** Oh, boy. It seems like we've been through this route so many times.

**Mr Kormos:** I know.

**Ms Switch:** One of the things you have to bear in mind too is that I think the government and certainly the administration of justice realize that they were greatly affected by those cuts in legal aid as well. The judges are overworked. The whole system comes to a halt. It all has to work together, does it not?

One of the things that happened to us family lawyers is that initially we agreed to cuts and then we were cut again. That's basically what happened to us. One of the things that we've been most concerned about is that our clients are adequately serviced. Obviously, if you don't have enough hours to do a proper job, the clients are at a disadvantage.

I don't know what else to say about that, other than that what has been found out in the last couple of years is that the clients weren't represented and the whole system basically ground to a halt as a result of the cuts they made to legal aid.

**Mr Kormos:** I suppose all I'm saying is I don't trust this government, but there's nothing new about that, because I haven't trusted earlier governments either, regardless of their political stripe. We can't count on governments per se. What I'm afraid of is the next government taking advantage of this unilateral funding power the same way, let's say, you can promise to eliminate the GST but once you're elected, hey, it's not shabby; nice revenues.

**The Chair:** Thank you very much for coming forward today.

## INJURED WORKERS' CONSULTANTS

**The Chair:** At that, we would call our last presenters forward, the representatives of the Injured Workers' Consultants. Thank you for coming.

**Ms Constanza Duran:** I would like to start our presentation by introducing myself and my co-workers and colleagues. I'm Constanza Duran from the clinic. I'm staff at Injured Workers' Consultants. I'm a community legal

worker. John McKinnon is the executive director. Peter Bird is a lawyer. Richard Hudon is another member of our board.

**Mr Peter Bird:** Just to clarify, I'm a lawyer and I'm a member of the board of directors of the legal clinic.

I'm going to start just by telling you a little bit about Injured Workers' Consultants and why Injured Workers' Consultants is in a very good position to talk to you about the main issue we're talking about today, which is the use of paralegals in providing legal services.

Injured Workers' Consultants was founded back in 1969 by a group of injured workers and other people who were not lawyers to provide representation to injured workers in dealing with the compensation board, and it's continued on that basis since. Most of the casework done at Injured Workers' Consultants is done by paralegals, as they're known in this bill; in the field, they're known as "community legal workers" or CLWs. Injured Workers' Consultants, staff-wise, has one lawyer, John, and seven community legal workers and one support staff. The vast majority of the casework is done by CLWs, and in fact done in an excellent way. CLWs can provide, and in many cases do provide, great service, if it's in the right context.

IWC became a community legal clinic in 1978 when the clinic system was created, and has continued on that basis since. IWC is a fairly unique clinic because there's no mandate that we have a staff lawyer. Until about 10 years ago, there was no staff lawyer at IWC. The clinic funding committee accepted that because the CLWs at Injured Workers' Consultants were widely recognized as experts in workers' compensation law and providing very good representation. Most clinics are not in that situation, but we are because of the expertise of our CLWs.

CLWs from this clinic have gone on to various other important roles in the workers' compensation sphere, such as sitting as vice-chairs and side members at the Workers' Compensation Appeals Tribunal, sitting on the Occupational Disease Standards Panel, which no longer exists, and have shown that CLWs can do a good job in the field.

Injured Workers' Consultants, as a community legal clinic — the board is representative of the community we serve. We have today three of our injured worker board members from various communities. We have Don Comi here from St Catharines, we have Swaran Singh from Pickering, and we have Costas Parlanis representing the Greek community. Our board has injured workers also from Etobicoke, Toronto and Bancroft. There are three lawyers on the board, one of whom is me. We all represent injured workers. We also have a law professor from Osgoode Hall Law School and a health and safety rep from a labour union, the Steelworkers.

1640

What service the clinic provides — and as I said, it's provided primarily by the community legal workers — is mainly case work. However, because of the expertise of this clinic, we also provide training to many of the other legal clinics throughout the province. Clinics that do some workers' compensation but don't specialize in it need training, and the CLWs at IWC provide that training. In

terms of the comments you're going to hear from other people from our group today, keep in mind that comments we're making about paralegals are coming from a very solid foundation of knowing what work paralegals, community legal workers, can do.

I think Richard's now going to comment.

**M. Richard Hudon :** J'espère que vous allez avoir de la patience avec moi, l'anglais étant ma seconde langue. Je ne m'attarderai pas tellement longtemps, mais du moins je veux faire la présentation en anglais.

Providing advice and representation to injured workers who are having difficulty with their workers' compensation claims has been a very important part of clinic law from the beginning of the community legal clinic system.

In Bill 68, workers' compensation law is not specifically listed as an area of clinic law. We trust this is because it goes without saying. The majority of the general service community legal aid clinics in the province provide advice and representation to injured workers in workers' compensation matters. Across Ontario, more than 7,000 injured workers receive assistance from community legal clinics every year. Legal aid clinics are an important resource for injured workers, because their conflicts with the workers' compensation system is often perceived as a conflict with the government. The independence of clinics and our community base makes us accessible as a resource for injured workers who are seeking access to justice from the compensation system.

In our office, we are starting to feel increasing demands for services from injured workers and we are seeing greater complexity involved in the representation of injured workers. The complete revision of the workers' compensation law this year has meant that more injured workers require advice and assistance with their claims. However, there has been no increase in the resources devoted to the advice and representation of injured workers in the legal aid system.

In fact, there has been a reduction in the availability of legal aid services. This has come about in several ways. First of all, with respect to the provision of legal aid certificates, there was recently a central guideline clarification issued from the provincial legal aid office restricting the availability of legal aid certificates to only representation at the Workers' Compensation Appeals Tribunal. Previously, the guidelines allowed some discretion, and in many districts legal aid certificates were provided for all aspects of workers' compensation claims, not just hearings, which allowed earlier access.

Secondly, in order to get a legal aid certificate, you will not only be asked to give a lien on your home, but you may now be asked to sign an agreement obligating you to repay the cost of legal aid out of any future workers' compensation benefits. Also, once any money is recovered, the certificate is cancelled, as legal aid expects injured workers to use the money recovered to retain a lawyer rather than for living expenses.

These are terrible disincentives. Workers' compensation and recoveries in other income support areas used to be exempt from the repayment obligations. For example,



social assistance, unemployment insurance, criminal injuries compensation and workers' compensation were exempt. Injured workers must gamble with their home and compensation benefits in the hope that they might get some further assistance from the compensation board. When legal aid has a lien on your house, it gets the money whether you win the case or not. Even if you do win, some of these appeals can be long and complicated and the lawyer's bill might be as much as or more than the compensation that is eventually awarded. Although they are desperate, injured workers are generally unwilling to gamble so much to get a legal aid certificate to pursue their rights under the workers' compensation legislation.

The services of legal clinics are free of charge to those who qualify financially. This may be an option for some injured workers, but staffing has been frozen at 1992-93 levels while many clinics have had increased demands for representation from different client groups such as social assistance or landlord and tenant issues. Competing demands for assistance out of limited resources has left some general service clinics no option but to limit the services to injured workers to meet the increased needs from other sectors of the community. The result has been a decrease in the services available to injured workers from legal clinics.

This will be problematic. The Workers' Compensation Board has told our staff that in the first six months of this year the number of appeals it received has increased by nearly 100% over the numbers of appeals filed in previous years. We are also told that over 80% of those appeals are being filed by injured workers. At the Workers' Compensation Appeals Tribunal their most recent annual report shows an increase of about 50% in the number of appeals filed this year over the previous year. Many of these injured workers are coming to community legal clinics for help. This concerns us, because there is no guarantee of adequate funding for ongoing legal aid services in the bill. Even with three years of continued funding at current levels, the increased demand for services means that, in effect, the availability of legal aid services is being reduced.

The increasing desperation of injured workers combined with the lack of sufficient resources for representation has led some injured workers to commit acts that endanger themselves or others. The Workers' Compensation Board reports a significant increase in the number of claims not allowed because they have been abandoned by the injured worker. In recent years, we have all seen reports of examples, such as the homeless injured worker in the Toronto Star last weekend; the injured worker who took his own life at the board's office in Ottawa; the injured worker on a hunger strike in Hamilton last year; or the injured worker who took staff hostage at gunpoint at the board's office in Timmins. We ask you to consider how community legal clinics will continue to provide a high-quality legal service on a frozen budget if the need for those services across Ontario increases like the number of appeals have increased at the board and the appeals tribunal.

When you are unable to return to work because of your disability, getting assistance from the Workers' Compensation Board can become the most important thing in your life. Now, more injured workers don't understand the system. They are desperate for help so they are turning to private fee-for-service paralegals to take their case, and this is creating problems.

1650

**Mr John McKinnon:** I'd like to give you some idea of the problems happening with private fee-for-service paralegals representing injured workers.

You know the appeals tribunal is the final level of appeal in the compensation system. Although you don't have to have a representative, their statistics are that 90% of the injured workers who go there do so with a formal representative. Their decisions are published, and they've documented a serious problem with the quality of representation by private fee-for-service paralegals. This contrasts with the proud representation we present in the clinics. They've documented the problem. We've attached to our brief summaries of a number of decisions in which they've commented on that problem. The problem is so serious that the tribunal felt compelled to develop a code of conduct for representatives. I believe it's the first tribunal in Ontario to do so. I know the government is working on something to deal with that.

Some of the examples you'll see from the appeals tribunal are paralegals not showing up at the hearing; paralegals showing up late for the hearing; paralegals quitting during the hearing — "I quit"; paralegals not bringing the injured worker to the hearing; paralegals showing up without having prepared the case; and paralegals being ejected from the hearing for obstructing the process.

It's a serious problem. The tribunal has commented on it. I urge you to take a look at the examples. In one of them, both the employer and worker side members wrote an addendum commenting on the problem, recommending, as the government is doing, that there be some investigation in a body to represent paralegals. They conclude — I quote it in my portion of the brief — that if something isn't done to ensure quality control, "parties may be innocent and unknowing victims of substandard representation, albeit in the minority of instances."

This is true. Workers' comp is one of the most complex areas of law in Ontario legislation and people don't necessarily know whether they're getting a good quality representation, whether the representative is taking the right approach. Problems that sound simple can be quite complex.

I'll give you the example of a pension appeal. I was at the appeals tribunal on Tuesday for an injured worker who was going to be here — he's in a wheelchair — but he was having trouble with Wheel-Trans. It's a simple issue: a pension increase. The board has rated him as being 35% disabled. He can't walk; he can't even get in and out of the bathtub or prepare meals by himself. We wanted to argue that it should be higher. Just to get to the appeals tribunal takes a certain amount of correspondence back



and forth with doctors and so forth. This is what, in my files, I had to produce just to get the case to the point of going to the appeals tribunal. Then, when you object, the Workers' Compensation Board will give you their file, which can easily be 1,000 pages of documents in a case that goes back over a period of years.

To prepare for the appeals tribunal, you need to try and pare it down. If you're lucky, you can come to some agreement that maybe 500 pages or so is all you need to look at for the appeal. Then, of course, various parties come up with a few addenda, and then you have to do your research. You have to read all this stuff, research the medical literature, photocopy all kinds of relevant material, write up your presentation, write up your submission and there you go. That's just for what people talk about as a simple issue, a pension appeal. Then you get half a day or a day to present the case.

What I ask you to consider is, how is the board of the new Legal Aid Ontario going to ensure, through the use of paralegals, that there is some quality, some thoroughness in the preparation, that the time is spent to review the material?

Also, it raises issues of confidentiality in terms of what obligations paralegals have in terms of solicitor-client privilege, in terms of confidentiality of the document. In here, for example, there are reports from two different psychiatrists, two different social workers, 10 years of reports from the family doctor and two psychologists. This file contains material which is so personal and so confidential that the injured worker involved will not let me discuss it with anyone. He will not discuss the details with me. He says these are personal, very private, highly embarrassing, have nothing to do with workers' comp, and he doesn't want to discuss them.

The provision under section 91 of the bill for quality assurance audits would allow an employee of the new legal aid corporation to come say: "OK, John, it's time for the quality assurance audit. Let's take a look at this file." What am I supposed to do? My instructions are entirely clear: "Do not discuss this with anyone." On the other hand, the legislation gives them the power to compel me to give it. In the short run it's my problem, but in the long run it's something that the new board of Legal Aid Ontario will have to grapple with.

**The Chair:** Just so you know, there's a minute remaining in your time.

**Mr McKinnon:** All right. I just wanted to emphasize that issues such as quality control are important problems for the board to grapple with. Perhaps I'll let Constanza just wrap up with a few concluding comments.

**Ms Duran:** Our clinic is a member of the Association of the Community Legal Clinics of Ontario and we endorse the comments they made a few days ago here in front of you.

We wanted to conclude by saying that workers' compensation has always been an important part of clinic law. Recent changes have increased the needs for injured workers for legal advice and representation and have also decreased the availability of legal aid certificates for this purpose. It is possible to provide increased legal aid serv-

ices for injured workers in a cost-effective manner through the use of non-lawyer advocates. It is possible to provide high-quality representation through community legal workers in the community legal aid clinic system.

The experience to date suggests that the expansion of the legal aid services for injured workers through the use of fee-for-service paralegals at this time could become tainted by poor-quality representation, and that could bring the services of Legal Aid Ontario into disrepute. The people in charge of Legal Aid Ontario will need to have the knowledge, skills, experience and the independence to make the right choices so that access to justice for poor people is not sacrificed in the name of expediency.

We also wanted to say in terms of the representation on the board of directors of Legal Aid Ontario that it's important to have members of the communities on the board, not only members who represent such communities. We think it's really important that members who are part of their community, such as, in our case, injured workers, be on the board of directors of Legal Aid Ontario, as well as other communities, the people who will need the services of legal aid.

**The Chair:** Thank you very much for your presentation today. We very much appreciate your coming forward.

**Mr Kormos:** On a point of order, Chair: This is the final presentation of the hearings. Quite frankly, this is the first discussion we've had of this facet, the workers' comp facet and workers' advocacy. I'm asking for unanimous consent to extend these hearings by 10 minutes so that each caucus has three and one third minutes to engage in dialogue with this group. This is incredibly important.

**The Chair:** Is there a unanimous agreement? Agreed. We will begin the questioning with the official opposition.

**Ms Castrilli:** Thank you very much. I certainly want to commend you. If we hadn't heard from you, we wouldn't have heard at all from the workers' compensation and injured workers' side of it.

We've had some recommendations that have been put to us with respect to paralegals. I think you can expect that there will be some amendments, certainly put forward by us, with respect to that to make sure you don't have incompetent individuals, particularly in areas as traumatic as the one you're involved with and particularly around the issue of confidentiality. By the way, just so you know, we've just received an opinion by the Privacy Commissioner, who is extremely concerned about certain provisions of the act in terms of how they collect information, what information is required, what should be reasonably required, what should be reasonably disclosed. All of those are issues that we've been raising, and it looks as though we have confirmation from the Privacy Commissioner. But those issues are important.

So you're spot on. What you're raising here are critical issues. We will certainly be putting forth those amendments and I trust the government will accept those amendments.

**1700**

You raised the issue of clinic law not including workers' compensation law, and I think that's an interesting



one. As I read the act, it talks about income maintenance programs under clinic law. Are you suggesting that that's not specific enough and that you want something further with respect to that?

**Mr McKinnon:** No, what we're suggesting is that it should go without saying. We distinguish workers' compensation from other taxpayer-funded forms of social assistance, because there is a tendency to talk about cranking down benefit levels in tough times and that that should apply equally to injured workers, who are funded solely by the employers where the injuries are caused, as well as to other people who are on taxpayer-funded forms of social assistance. So we make that distinction.

We think that it goes without saying, hopefully, that workers' comp is an area of clinic law. We were wondering whether a specific mention of workers' compensation law might suggest that all community legal aid clinics are expected or required to provide services for injured workers and workers' compensation matters. The concern about that is that it would interfere with the independence of the community board. In some areas their needs are different, the demands are different, and we didn't want to interfere with the discretion of each community board. That's why we're not saying that it should be included, and we're hoping that it goes without saying.

**The Chair:** We move to the third party.

**Mr Kormos:** Three issues.

One: The defunding of our constituency offices across the province, and now the reduction of those numbers to 103 from 130, has put real pressure on those of us in the New Democratic Party who were doing workers' comp work out of the office. We've had to abandon it almost across the board and hand it over either to clinics in our community or to OWAs or to workers' advocacy groups. I want to make that clear, and it's not going to get better. It's going to get worse.

Two: The issue of paralegals. We've heard some pretty strong arguments, and I note that in your written submission towards the end, you've got some strong views expressed about private sector paralegals. I want to see paralegals out of the bill in terms of being capable of receiving a certificate, at least at this point, when they're not even regulated. But you've also talked of CLWs — and no disrespect to lawyers here, but I get to bash lawyers because I used to be one — and the fact is, in workers' comp I'll stack most of the lay advocates up against a lawyer any day of the week.

The experience I've had, be it with clinic advocates, organizational advocates or OWA advocates, any day of the week, the companies hire these big high-priced lawyers and the paralegal working with the clinic or OWA runs circles around them. So I want to make it clear that, in my view, I want to eliminate paralegals from the bill by way of private sector service provider certificate, but we don't want to do it in a way that excludes them from providing the services in clinics. I just want you to respond to that so that we can develop an amendment or get on the record exactly what our intention is.

**Ms Duran:** At the legal clinic we community legal workers are basically accountable. We are accountable to the community through our board of directors. We do extensive research and studies and share information about the injured workers, and we are accountable to them, so our work as community legal workers is really important for the community.

**Mr Kormos:** My final issue is that this bill does not guarantee any minimum standard for what constitutes adequate legal aid services in the province. This government and subsequent governments, whoever replaces this government in six or seven months' time is going to be able to decide unilaterally the amount of funding. So any government, this one included, or subsequent governments, can do through the back door to the legal aid system what they wouldn't dare do through the front door, simply by saying, "No, you only get X number of dollars."

It has been suggested that there should be, among other things, minimum standards for what constitutes legal aid services and an arbitration process that is binding on the government, where the corporation could go to arbitration to say, "This is X number of dollars that we need to run an adequate system." What do you say to that?

**Mr Bird:** If I could respond to that, as you probably know, some years ago the legal aid plan essentially switched from being a plan where dollars were provided according to need to a plan where dollars were allotted and whatever need could be fulfilled with those number of dollars was fulfilled. That's a big problem.

I'm in private practice. I've done a lot of legal aid work throughout the 14 years I've been in practice, and it's just been drastically slashed and hacked. You heard from the Family Lawyers' Association about how their tariff was reduced. For workers' comp it was reduced from 25 hours of preparation for a one-day hearing to six, so you can imagine going through these kinds of files.

**Mr Martiniuk:** I'd like to thank you very much for your presentation here today. I have personal knowledge of the good work your clinic and many of the clinics have provided to my constituents with great assistance, and I thank you for that.

I should say that as a result of the hearings, and you've raised the point also regarding paralegals, it was not the intent of the legislation to provide certificates to paralegals per se, and we will be providing amendments which will clarify that. Legal aid certificates will still be available, of course, for workers' compensation matters, but they will only be available to lawyers as they have in the past.

I was not aware of the number of paralegals. Can you put any estimate on the number of paralegals who might be operating in the workers' compensation system?

**Ms Duran:** At the appeals tribunal, statistically representation of paralegals was approximately 40%. The Office of the Worker Adviser was the next one, which was about 20% of the representation.

**Mr Bird:** In terms of absolute numbers, it's hard for anyone to know because they are totally unregulated. But I think anyone who does work in the field knows that the numbers have exploded recently because of the waiting

lists at the community legal clinics and the waiting lists at the Office of the Worker Adviser. The legal aid cutbacks have meant a lot of private lawyers aren't doing it any more because you can't run a practice on it. This has created a huge need and these private paralegals have stepped into the void, many of them, unfortunately, not doing a good job.

**Mr Martiniuk:** I'll just leave it. The Attorney General has provided me with instructions to study this matter of unregulated paralegals. I've been doing that for the past eight months. If you have any specific recommendations, I would appreciate you writing to me and providing same. Thank you very much for your presentation here today.

**The Chair:** Thank you very much for coming forward today and giving us your presentation.

**Mr Kormos:** I want to express appreciation to the parliamentary assistant for indicating that he has received direct instructions from the Attorney General to respond to the paralegal issue. Even though the Attorney General was in New York being courted and wined and dined over the weekend by high-priced corporate power, he still found time to send some instructions to his PA, and that's good to hear.

**The Chair:** Thank you, Mr Kormos.

I would remind the committee that the amendments are due by 3 pm tomorrow. This committee rises until 3:30 pm on Monday, November 23.

*The committee adjourned at 1709.*

## ERRATUM

No.	Page	Column	Line(s)	Should read:
J-25	J-405	2	3	his comments. Virginia MacLean from Toronto, who





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Ms Marilyn Churley (Riverdale ND)

### **Clerk / Greffière**

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## Assemblée législative de l'Ontario

Deuxième session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 23 November 1998

# Journal des débats (Hansard)

Lundi 23 novembre 1998

## Standing committee on administration of justice

Legal Aid Services Act, 1998

## Comité permanent de l'administration de la justice

Loi de 1998 sur les services  
d'aide juridique

Chair: Jerry J. Ouellette  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Monday 23 November 1998

*The committee met at 1601 in room 151.*

## LEGAL AID SERVICES ACT, 1998

LOI DE 1998

## SUR LES SERVICES D'AIDE JURIDIQUE

Consideration of Bill 68, An Act to incorporate Legal Aid Ontario and to create the framework for the provision of legal aid services in Ontario, to amend the Legal Aid Act and to make consequential amendments to other Acts /  
Projet de loi 68, Loi constituant en personne morale Aide juridique Ontario, établissant le cadre de la prestation des services d'aide juridique en Ontario, modifiant la Loi sur l'aide juridique et apportant des modifications corrélatives à d'autres lois.

**The Chair (Mr Jerry J. Ouellette):** I call this standing committee on administration of justice to order for clause-by-clause purposes on Bill 68, the Legal Aid Services Act.

We will proceed. For further reference for those individuals here in attendance in committee today, in the upper right-hand corner is the clerk's numbering of each of these, and for simplicity's sake we will refer to those numbers in the upper right-hand corner in future.

Are there any amendments to section 1 of the bill?

**Ms Annamarie Castrilli (Downsview):** I move that section 1 of the bill be amended by inserting "equal" before "access" in the second line.

**The Chair:** Any discussion?

**Ms Castrilli:** It's very simple. It doesn't require a lot of discussion. I expect the members of the committee will immediately see the symbolic value of this. This is in fact a bill about ensuring that everyone in society has access to justice regardless of the size of their pocketbook. I think the way to demonstrate our commitment to that principle very clearly is to say that in this province there is equal access to justice through legal aid.

**The Chair:** Further discussion? Seeing none, shall the motion as put forward carry?

**Ms Castrilli:** Recorded vote.

Ayes

Castrilli, Kormos.

Nays

Martiniuk, Rollins, Bob Wood.

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Lundi 23 novembre 1998

**Ms Castrilli:** Opposed to equality and justice. I can't believe that. This is a good start.

**The Chair:** The motion is defeated.

Seeing no further amendments to section 1, shall section 1 carry? All those in favour? All those opposed? Section 1 carries.

Are there any amendments to section 2 of the bill?

**Mr Gerry Martiniuk (Cambridge):** I move that the definition of "service provider" in section 2 of the bill be amended by striking out "including a paralegal and a mediator" at the end.

**The Chair:** Discussion?

**Mr Peter Kormos (Welland-Thorold):** Fine by me. I'm sure the PA has an explanation for that.

**Mr Martiniuk:** Yes. If you recall, we heard testimony from various parties that there was an ambiguity in the act that could be construed as permitting paralegals to obtain certificates directly rather than, as in the past, lawyers obtaining certificates. This is the first of a series of amendments which will provide that paralegals will not obtain certificates for legal services. There will be provisions later for non-legal services in the case of mediators, for instance, and by removing and changing this definition it starts to clarify the act in this regard.

**Ms Castrilli:** Let me say that I applaud the government's intent on this. It's obviously very important to ensure that legal aid certificates only be given to people qualified to receive them. My concern is whether you actually will accomplish what you want by this. I'm really raising it as a question, because the definition now reads, "'service provider' means a person, other than a lawyer, who provides legal aid services...." Is that correct? That's how you read it? To me, that's a much broader definition than one that includes paralegals and mediators. I'm really just seeking clarification here. If the object is to narrow the definition, I don't know that you've accomplished it through this section, and I applaud the intent to narrow it.

**Mr Martiniuk:** I'll be making a motion, being item 33, which I believe will clarify the situation, if you'd like to take a look at that as background. In that motion, subsection (4) provides, "Legal services should only be provided by a lawyer or a person working under the direct supervision of a lawyer." That, in combination with what we're doing, will ensure that the original drafter's intent in this legislation is carried out, ie, that only lawyers will obtain certificates for legal services.



**Ms Castrilli:** Just to be consistent, because we want to achieve the same thing here, I wonder why you wouldn't have defined "paralegal" as someone who only works under the supervision of a lawyer, which is, I think, what we heard throughout. There are still sections in the act which deal with mediators, and we have not defined that. There's still a section in the act to deal with paralegals, and we don't define that. We have this very broad definition of "service provider" which is so broad as to render it meaningless.

I raise these issues because at the end of the day we want to make sure that certificates are issued only to qualified people — lawyers — and I'm confused in reading the amendment as to whether we really achieve that purpose.

**Mr Martiniuk:** The intent is to leave some degree of flexibility for paralegals to obtain a certificate for non-legal services. I can't really think of an example at this moment, but paralegals for instance in the public educational field. That is the intent and that will be defined. A non-legal service will be defined by way of regulation.

**Mr Kormos:** I find myself compelled, I suppose, to agree with it. It includes "mediator" in the deletion, along with "paralegal." That's what Ms Castrilli is speaking to.

But you'll notice that the New Democrats have an amendment tabled further on down the road here which would exclude "paralegal" from this section, and this simply excludes "paralegal" and "mediator." The Liberals have the same motion in motion 8. That having been said, I take no quarrel with you. It perhaps would have been clearer had the amendment proposed by either the Liberals or the New Democrats been chosen, because it specifically deletes "paralegal," as distinct from yours which deletes "paralegal" and "mediator."

I'd ask you to check your motion 33. I would suggest to you that maybe you should have said "legal aid services." Other people are shaking their heads, so I'm looking forward to the debate over that next motion.

I join with Ms Castrilli in expressing the concern that it wasn't just "paralegal" that's deleted here from the definition of "service provider." Paralegal and mediator — well, let's see whether Mr Martiniuk has the support of his caucus first. They may not support him on this amendment, in which case our arguments are moot.

1610

**The Chair:** Further discussion? Seeing none, we'll call the question. All those in favour of the amendment, as presented? All those opposed? Carried.

Liberal motion number 3.

**Ms Castrilli:** Chair, I move that the definition of "criminal law" in section 2 of the bill be amended by inserting "correctional law and" after "includes" in the first line.

If I could just explain this, this is the only recommendation that was made to us by the Elizabeth Fry Society. They felt very strongly that the criminal law doesn't include correctional law, and there is a very real need for basic rights to be safeguarded in the correctional law area. I don't want to go over the arguments; I think they were very well stated during the hearings. It seems to me a very

simple amendment that could be made. Given the fact that this particular piece of legislation doesn't guarantee that legal aid will be given to any one group, I think this is one of the items that ought to be included for consideration by the new board.

**Mr Kormos:** We're going to support this. It makes sense. It reflects what the government would say is its intent, and if the government really means it, then it should be prepared to include it in the bill.

**Mr Martiniuk:** We'll be voting against this motion on the basis that the board should have as much flexibility — they can choose to decide that matter, not us. Don't forget, the whole intent of this act, just to put it in the framework, is to set up a corporation which has some degree of flexibility and is arm's length from the government and from the law society and the lawyers, to permit them to make decisions for the public good. We don't want to fetter them unduly right at the beginning.

**Mr Kormos:** "Fettering" is exactly the word. It's becoming pretty clear at the very beginning of this discussion by way of clause-by-clause that this government has every intention of fettering, cutting off at the knees, this corporation before it's even undergone any gestation period, for Pete's sake.

By not including this, that's precisely what it's doing. You know what's happening here: The government is setting up this corporation such that the corporation cannot use an expressed mandate, to wit, correctional law, and we'll see down the road if immigration law and refugee law, among others, suffer the same treatment by the government.

They're being neutered such that they can't argue that, this being part of their mandate, they then have a right, or the government has an obligation, to appropriate levels of funding. This government is setting up the corporation to fail. That's become clear at this early stage. We're only 12 minutes into clause-by-clause. This is not a very good beginning.

I came here today hoping to be persuaded that maybe I could support this bill after all. On the contrary, the parliamentary assistant for the Attorney General is doing his capable best at convincing me that this bill isn't worthy of support when he's taken this view from the get-go.

**Mr Alvin Curling (Scarborough North):** If I understand this correctly, this amendment is asking for much more flexibility. The amendment here is saying that the definition of "criminal law" be out, and I thought that inserting "correctional law and" after "includes" in the first line would give that flexibility as a group. If the parliamentary assistant could influence me or convince me otherwise, that going this way is less restrictive than the other way — is that what you're saying? I just want an understanding from you. You're saying that what you have will give you more flexibility. What we are asking for is giving you more flexibility. I'm kind of confused about that. Do you mind explaining that to me?

**Mr Martiniuk:** I believe the defeat of this particular amendment would still permit the corporation to choose to go into what is not correctional law so much as administrative tribunals, because most penalty actions while a

person is incarcerated would come under administrative tribunals rather than to the courts, for the most part.

I suggest there's nothing in the way the present section is set up that would not permit the board to choose to get into that field. This legislation is permissive whereas the amendment is mandatory.

**The Chair:** Further discussion? Mr Kormos.

**Ms Castrilli:** I only have one thing to say. Sorry, Mr Kormos.

**Mr Kormos:** Please go ahead.

**Ms Castrilli:** The only thing I want to comment on is, if that's your intent, it's very easy to fix. Just say so. It seems to me it's a very simple matter to deal with.

**Mr Kormos:** Precisely. To the contrary, Mr Martiniuk talks about this legislation being permissive. It would be permissive if it included this definition. It would say "this includes," and the inference there, as Mr Martiniuk knows, is "includes but is not limited to." It doesn't have to be stated; it's not limited to but includes, as a way of illustrating it.

Mr Martiniuk makes the point when he says that this is in the realm of administrative law, which is another silent area in the legislation, because the legislation doesn't speak of administrative law, does it, Chair? It doesn't speak of administrative law, yet Mr Martiniuk wants to typify correctional law as law that is administrative law. Gosh, Ms Castrilli may be helpful in this regard, or indeed Mr Wood, whose handle on these things seems to be better than some of the other Tory backbenchers. But you're talking about all sorts of areas, for instance, of judicial review, when you deal with extraordinary remedies. Again, I'm sure Ms Castrilli would agree that's far beyond the arena of administrative law and it's very much specifically what's being contemplated — I trust it's being contemplated — when Ms Castrilli seeks the inclusion of "correctional law."

Mr Martiniuk is not correct when he talks about correctional law being in the area of administrative law. Even if he was, administrative law of course isn't referred to in the bill.

**The Chair:** Further discussion? Seeing none, we shall call the question.

**Mr Kormos:** A recorded vote, please.

#### Ayes

Castrilli, Curling, Kormos.

#### Nays

Hudak, Martiniuk, Rollins, Stewart, Bob Wood.

**The Chair:** I declare the motion defeated.

Committee motion 4, Mr Kormos, and discussion, please.

**Mr Kormos:** I move that the definition of "clinic law" in section 2 of the bill be struck out and the following substituted:

"clinic law" means the areas of law which particularly affect low-income individuals or disadvantaged communities, including,

"(a) administrative law, immigration law, refugee law and environmental law,

"(b) legal matters relating to housing and shelter, income maintenance, social assistance and other similar government programs, and

"(c) legal matters relating to human rights, health, employment and education."

This maintains the definition but notably for the inclusion of administrative law. Here's a chance for Mr Martiniuk to put his money where his mouth is. It's his opportunity. It includes administrative law, immigration law, refugee law and environmental law, all of which were addressed any number of times by presenters to the committee.

It would be imperative that if the government is going to treat these hearings with any regard or respect, it give effect to those presentations. This reflects the presentations that were made, if this government's listening, and here's a chance for the little Tory backbenchers on the committee to tell Mr Martiniuk to go pound salt when it comes to marching orders, to tell Mr Martiniuk to stuff it, that their integrity —

**Mr Martiniuk:** On a point of order, Mr Chairman: None of our backbenchers here are little, and I'd wish that for the record. That's what you said.

**Mr Kormos:** You're right. Some of them are formidable in girth. They were little when I first encountered them three years ago but they've all grown over the course of the last three years.

**The Chair:** Mr Wood appreciates that.

**Ms Castrilli:** Another point of order?

1620

**Mr Kormos:** None the less, here's the chance for these weighty Tory backbenchers, these heavyweights in caucus, to tell Mr Martiniuk to go stuff it, to go pound salt, that he's here to lead but not to merely give orders and that they are quite capable of forming their own opinions about these.

Those who didn't have the opportunity to be here, and I understand how that happens, of course read all the submissions. I'm sure they've read every single one of them. They've accessed Hansard on-line to make sure they understand. They know that submissions were made in support of the inclusion of administrative law, immigration law, refugee law and environmental law. Here's their chance to show that they believe in democracy, that they believe the committee has a process that's designed to respond to the input provided. Here's their chance to do that by supporting this amendment.

**Ms Castrilli:** I'm very pleased to support this amendment. It incorporates our thinking on this, and there are other amendments in here from our side that will bear this out as well.

Let me just say to members of the committee, because not everybody has been with us at every juncture — and that's not because you haven't wanted to be there but because the composition has changed, depending on the city we were in, to accommodate members who were there — for those of us who have been there the entire time, bear in mind that item (a) in this amendment was a



consistent theme we heard everywhere we went. That is, there was nobody who said to us, "I really don't like the notion of administrative law, correctional law" — which according to Mr Martiniuk's definition is included under administrative law — "I really don't like the notion of immigration law, I really don't like the notion of refugee law, I really don't like the notion of environmental law being included in the act." In fact, what we heard was exactly the contrary. We had witness after witness who said, "These are important areas of the law which must be covered in any rethinking of legal aid."

What we've got here is a very important opportunity. What the government is creating is a brand new structure for legal aid. In a sense we're starting from scratch, but as we do that we can't forget that there are very important issues that cannot be ignored. These four are critical and there has been absolutely no evidence before us that we should ignore them. I appeal to the members of the committee to bear that in mind, to bear the very significant public input that we've had on these issues in mind and include them in the definition of "clinic law."

**Mr Curling:** The changes to the Legal Aid Act were applauded because the fact is that they gave an opportunity for many things to be included in it. Sometimes we really just talk the talk; well, here's a time when we do the talk and do the walk. I must applaud the NDP in bringing this forward because this is easily understood. This is what many people like the African Canadian Legal Clinic and the black law society and the Canadian Council for Refugees have said, very much so, that we need to know what's in it. Here, specifically, is an opportunity to amend this, including the things that are laid down here: administrative law, immigration law, refugee law and environmental law.

As you know, many, especially minorities and the poor, who have limited access to the opportunity to be defended need these things to be explained to them. Here's an opportunity for the government to say, "Yes, it is explained, it is appropriate, and it's easily understood that especially legal matters relating to human rights, health, employment and education are things that affect these individuals." To include this and put it in as part of the amendment is a progressive way of moving forward.

Whatever definition Mr Kormos gave the backbenchers, I would encourage the formidable caucus of the Conservative Party to support this. I think you'll be applauded and it will be fully understood that you mean what you say and you're talking the talk and walking the talk.

**The Chair:** Further discussion? Seeing none, I shall call the question.

**Mr Kormos:** A recorded vote, please.

#### Ayes

Castrilli, Curling, Kormos.

#### Nays

Hudak, Martiniuk, Rollins, Stewart, Bob Wood.

**The Chair:** I declare the motion defeated.

Committee motion number 5 and an explanation.

**Ms Castrilli:** I move that section 2 of the bill be amended by adding the following definition: "immigration law" includes refugee law."

This really came through in a number of submissions that were made, that it would be easier in terms of the interpretation of the bill if you had a very clear definition section and it would make the act simpler. I'm just responding to that. I think it's a very good suggestion. Since we deal with immigration and refugees throughout the bill, this is really in the nature of housekeeping. It's simply redefining it so that "refugee" is included under "immigration."

**Mr Curling:** I totally agree with this motion, as you'd expect. Quite often there seems to be confusion. To me, "immigration" and "refugee" are the same, in the sense of dealing with the individuals. When I say they are the same, to be more specific and clarify the matter when we talk about immigration law, it must also be stated that we are speaking about refugee law. I would strongly support this and urge the members to support this so one is clear on what it really means.

**Ms Castrilli:** Let me just add that this is not a substantive change to the bill. It's just a slightly different handle. It's doesn't change anything that's in the bill at all, because we refer to immigration and refugee law throughout the bill. It's simply a question of convenience more than substance.

**The Chair:** Further discussion? Seeing none, I shall call the vote. All those in favour of Liberal motion 5? All those opposed? I declare the motion defeated.

Liberal committee motion number 6, with explanation, please.

**Ms Castrilli:** I'd like to seek guidance as to whether this is in order, because we've struck the definition of "service provider" which includes paralegals, and I don't know now, following the discussion we've had, whether paralegals are included at all in this bill. They're not included?

**Mr Martiniuk:** Paralegals are no longer in the bill.

**Ms Castrilli:** So I would think that this motion would not be in order and I withdraw it.

**The Chair:** Liberal committee motion number 6 is withdrawn.

**Mr Kormos:** Number 7 is withdrawn.

**The Chair:** Number 7 is withdrawn. And number 8?

**Ms Castrilli:** Number 8 is similarly withdrawn.

**The Chair:** Withdrawn.

At that, shall section 2, as amended, carry? All those in favour? All those opposed? The amended section 2 is carried.

Section 3: Seeing as there are no amendments, any debate on section 3?

**Mr Kormos:** What I find interesting about section 3 is the final subsection: "The corporation shall be independent from, but accountable to, the government of Ontario as set out in this act." I'll say it will be. As a matter of fact, it will be controlled by the government of Ontario because the corporation is entirely dependent upon the whimsical participation of the government when it comes to funding.

The corporation is accountable to the government; the government isn't accountable to the corporation in any way, shape or form.

This is no accident in drafting. I think this very clearly sets out the unidirectional flow here. Do you hear what I'm saying, Chair?

**The Chair:** I certainly do.

1630

**Mr Kormos:** I bet you do. I'm sure you do. You understand exactly what I'm saying. I just wanted to highlight subsection 3(4). It's consistent with what the parliamentary assistant has been doing so far here, where he's trying to shackle, inhibit or limit the role of the corporation as much as possible. Again, subsection 3(4) spells it out in no uncertain terms. I quite frankly am going to vote against section 3 for that reason. Subsection 3(4) creates a very unidirectional sort of flow of responsibility and reinforces the complete absence of any obligation on the part of this or the next government that's elected to finance it.

**Ms Castrilli:** I regret that, the way the work of this committee has gone, there has been precious little time to really think through the amendments and get them in on time, because as you know we were in committee until Thursday night and we were required to have the amendments by Friday at 3. I commend legislative counsel: They did a superb job but some things got missed on our part and their part, and it wasn't intentional.

This is one area where I think the ball was missed. I take full responsibility; I'm not blaming legislative counsel for this. But you'll see from some of the other amendments that we will be introducing that we intend to make the corporation accountable to the Legislative Assembly rather than to the government of Ontario. We missed the ball on this one and the amendment is not there. But I do think that to provide some more public accountability and — you'll see some other provisions in here that we think are necessary to give the corporation the kind of credibility it needs. It requires something broader than just accountability to the government of Ontario.

We heard this from everybody who came before us. Everyone wants a public process, wants inclusion. Legal aid and the delivery of justice are not like other services. We're talking about ensuring that people get a fair share in this province in a way that really doesn't affect other areas. I think that it's much more important to have a corporation such as this, in order for it to be independent, to report to the assembly rather than to the government. That picks up some of Mr Kormos's concern. We'll get into the issue of funding; we are very concerned on this side that some of the agenda may in fact be defunding of certain areas and cutting back on funding of the rest. We remain very concerned about that.

**The Chair:** Further discussion? Seeing none, I shall call the vote.

**Mr Kormos:** A recorded vote, please.

**Ayes**

Hudak, Martiniuk, Rollins, Stewart, Bob Wood.

**Nays**

Castrilli, Curling, Kormos.

**The Chair:** I declare section 3 of the bill carried.

Section 4: Discussion?

**Mr Kormos:** Let me draw peoples' attention to the single most important sentence, literally, in section 4 which is in paragraph (b). "The objects of the corporation are,...(b) to establish policies and priorities for the provision of legal services...." That in itself would be a relatively sound proposition. But talk about fettering: Look what the rest of that sentence is in paragraph (b): "to establish policies and priorities for the provision of legal aid services based on its financial resources."

Do you understand what the corporation is required to do? Instead of saying, "This is what a legal aid system should be," when we have x number of dollars we should be saying, "How do we achieve that goal as much as possible?" They're limited even in terms of what they determine the parameters to be by what the level of funding is. Do you see what this sentence does? This sentence inhibits or controls the extent to which the legal aid corporation can establish policies and priorities, because it can only establish policies and priorities based on its financial resources.

Talk about a kicker thrown in there, a kick to the groin. This lays it out on the ground: "based on its financial resources". Since it has no power to determine the adequacy of resources, this or any subsequent government will determine unilaterally, without appeal or recourse on the part of the corporation, because there is no minimum standard for what constitutes a legal aid system in the province of Ontario; because guarantees of funding only apply for three years, subject to the approval of some amendments that are in here from opposition parties; because the guarantee of funding only applies to legal aid clinics, not to overall funding — and that's only for three years, and to refugee and immigration law for only two years. Very, very dangerous; David Artemiw from York University would find this thoroughly repugnant. Larry Savage from Brock University would find this totally objectionable.

I'm compelled to vote, on the record, against section 4. Let's understand clearly the stunt the government is pulling here today: "establish policies and priorities." Big deal. It's based on its financial resources. That puts the position of the corporation not as one of leadership. Do you get it, Chair? It's not leadership any more, it's not even really establishing policies and priorities, because it's based on what the government says it will and won't do because of the government's unilateral power to determine the level of funding. It's a joke.

**Ms Castrilli:** I agree with the premise of Mr Kormos's position but not with his conclusions. I want to be clear what I mean by this section 4.

**Mr Kormos:** Mr Curling was impressed.

**Mr Curling:** I'm continually impressed.



**Ms Castrilli:** We have free votes on this side so Mr Curling can vote as he wishes.

Let me explain. I'm in favour of the notion of an independent corporation, of a separate corporation. The reason that I voted against the last section is because of the reporting mechanisms. I'm certainly not against the notion of the corporation.

If we were to have an entity that is a corporation, it must act responsibly and it must act in accordance with financial resources that it has. This is where I take a slightly different position from my colleague in the NDP. Corporations that go beyond their financial means go bankrupt, and that's not what we want for legal aid. I think your concerns are well-taken but I'm not sure this is the place to express them. I think the place to express them is when it comes to the issue of funding: how it's funded and what is funded. Those are critical issues to be answered and I think you made some very legitimate points with respect to that. But a corporation must act within certain confines and I don't have any objections to one of those confines being its financial resources. However, the adequacy of those resources we will certainly want to discuss later on.

**Mr Curling:** I was going to make a comment about that because I think that Mr Kormos made a very good point. Of course my colleague also states one, that no corporation can spend beyond its resources. But we know that the legal aid system is — I don't want to say otherwise — very much a part of the government and its ability to raise its funds. But if those financial resources are restricted, I'd have to be told how well it could be financed, because as soon as it's restricted based on its financial resources, if its financial resources are limited, the services it will give will be limited.

I continue to be concerned that those it's giving services to are those who are poor and those who won't have the adequate kind of access to good legal defence, so to speak. I need to be convinced that the government is prepared that its financial resources will not be restricted in any way, to make sure that people do have access to good legal support. Maybe the parliamentary assistant can impress upon me that this government will give the latitude that financial resources coming to the corporation will be very wide, to make sure that all are protected. Could the parliamentary assistant make a comment on that?

1640

**Mr Martiniuk:** A memorandum of agreement will be signed between the corporation and this government guaranteeing funds for the next three years on the same level as it has been funded up to this date.

I think it's very important that we must read the bill as not particularly this government; Mr Kormos wants to interpret this section as this government and what we may think and our philosophies. We have to think of all governments and this bill has to be read applying to all governments. For instance, Mr Kormos, I'm not as pessimistic as you. I believe that the NDP will again come to power in this province; not during my lifetime, but I believe that's

possible. Therefore, your complaint is about this government. I can understand our philosophical differences and I appreciate them. However, there is nothing wrong with the wording of that particular section. All it says is that the corporation should be responsible. Surely you would have to agree with that. I have to agree with Ms Castrilli in that respect.

**Mr Kormos:** I want to tell the parliamentary assistant that he is quite agile for a man of 97 years, well beyond the actuarial life expectancy for a person who has had the lifestyle he's had.

I similarly understand that 6 o'clock, which is when the committee shuts down, puts some pressure on the Conservative members who want to get out to west Toronto where the duke-out is taking place between Mr Ford and Mr Stockwell. They are competing for scarce resources out there. Some are shaking their heads; I suppose those are the smarter ones. If they keep me out of it, I ain't going to go near that nomination meeting tonight for a million bucks.

I regret that I won't be able to be there, because I have the greatest affection for Mr Ford and Mr Stockwell. Quite frankly, Mr Ford in private conversation has displayed himself to be far more left-wing than any members of his caucus. In fact, Mr Ford, in conversations that I recall, has tended to agree with me on a whole number of socialist principles that are really quite surprising. I suspect that Mr Ford could be something of a fifth columnist in the Tory caucus. Really, he's a progressive, he's pro-union, he's pro-public ownership, he's pro-distribution of wealth, but he's had to keep it under his hat so as not to offend that cabal of right-wingers in the Conservative caucus.

I encourage fair-minded, true Progressive Conservatives to cast their support for Doug Ford. I know that I, as a democratic socialist, as a member of the New Democratic Party, if I had the chance to be out there tonight, I'd be wearing a Ford button. I'd be doing everything I could to get Mr Ford nominated as the next candidate.

I appreciate the comments of the parliamentary assistant. Look, I appreciate I've gone beyond the scope here. I've abused my role here by basically endorsing Mr Ford and expressing my personal friendship and admiration for him in that we share so many common views. I hope you will understand, Chair. I appreciate the parliamentary assistant's response to my comments. I maintain my disagreement with him.

I hope Mr Ford has benefited from my support and gesture, my indication of support for him.

**The Chair:** Yes, very much so.

**Mr R. Gary Stewart (Peterborough):** I am compelled to make a comment as a businessman on this particular section. I know it is very difficult for Mr Kormos and some previous governments to know in any way what the words "responsible financial management" and "financial responsibility" mean. I believe that legal aid has run rampant in its inability to manage and I truly believe this suggests the direction that our government is going in and trying to instill in acts that there is financial

responsibility for all folks, to make sure that those who truly need the service are going to get it.

**The Chair:** Further discussion? Seeing none, I shall call the vote on section 4.

**Mr Kormos:** Recorded vote, please.

#### Ayes

Castrilli, Curling, Hudak, Martiniuk, Rollins, Stewart, Bob Wood.

#### Nays

Kormos.

**The Chair:** I declare section 4 carried.

On section 5: Committee motion number 9, with explanation, please.

**Ms Castrilli:** This is one of a series of motions intended, as I was saying before, to broaden the public accountability of the board.

I move that subsection 5(2) of the bill be struck out and the following substituted:

“Composition

“(2) The board of directors of the corporation shall be composed of 11 persons appointed by the Lieutenant Governor in Council on the address of the assembly after consultation with the Chair of the standing committee on administration of justice.”

**Mr Kormos:** I understand Ms Castrilli's efforts to improve the serious shortcomings, but with all due respect I don't understand “after consultation with the Chair of the standing committee on administration of justice.” I hope she'll elaborate on that.

**Ms Castrilli:** I'd be glad to. Again, I apologize: This is part of the problem of trying to do a lot of work in a very compressed period of time. In my mind it fails as a stand-alone section. You have to read it with Liberal motion 12. I don't know why some of these motions were not put together, but they weren't. The whole notion is to have a public appointments process prior to the matter going to the standing committee on administration of justice. The selection process then climaxes at the justice committee and appointments are made. There are a number of sections like that, which are intended to be read together. Unfortunately they're disjointed in their presentation.

**Mr Kormos:** I'm going to support this motion, especially in view of the fact that it's consistent with our motion number 10, which speaks of public hearings but doesn't specify which committee hears them. If I were speaking to that motion now, I'd indicate that we anticipate it would be the committee that usually reviews public appointments. But I'd be quite pleased to have it restricted to the justice committee, which would make it tie in with the Liberal motion. So I'm going to support the motion, and I'm calling for a recorded vote.

You heard the concern expressed that this retains power of appointment with the Lieutenant Governor in Council. Fair enough. It speaks only of consultation,

which means public hearings. I don't know what the government could possibly find offensive about that. Quite frankly, over the course of three years-plus now, I've spent a fair amount of time at — what's the name of the committee that reviews appointments to agencies, boards and commissions? I call it the ABC committee.

**Mr Martiniuk:** ABC.

**Mr Kormos:** That's what Mr Martiniuk calls it too, but we're both wrong. That's not the title of it. It's called something else.

**The Chair:** The standing committee on government agencies.

**Mr Kormos:** Thank goodness the Chair's here. Mr Ouellette saved the day once again. Mr Ouellette is a very bright young man who serves this committee well, and we're grateful to have him here.

I spent a lot of time on that committee, Chair, and you'll recall that there were more than a few occasions when the government withdrew its own nominees after they were subjected to some modest questioning by the committee, because those were real dogs. Even the government became convinced of it.

*Interjection.*

**Mr Kormos:** They were. They barked all the way down the hall as they were leashed into the government agencies committee.

I don't know what the government could have against public review of intended nominees. I have no idea what could be in the government's mind in that regard.

**Mr Curling:** My concern is about appointments. Let's come right up front. The Attorney General is an elected member, appointed by the Premier to sit in the cabinet. This is not like the Attorney General, who is picked and sits there quite independently, but we kind of want to believe that that is very independent of everything else. Remember, it was this party that even had an Attorney General and Solicitor General in one. It is rather confusing to me that you could have one and the same person being Attorney General and Solicitor General.

I very strongly support this motion, because it tends to kind of take it away a bit and makes it more open, that the appointment of the board would be done in this manner. I'm rather concerned about the way it's put in the legislation. I hope the committee can recognize that; that is, move away from this biased way of five persons selected by the Attorney General from a list of persons recommended by the law society — well, big deal — five persons recommended by the Attorney General again. So you have 10 people who are going to be appointed by the Attorney General anyhow.

This way is a bit more open. You talk about open government and what have you. If we go in this direction, I think it's more open, and I ask you to support that. I'm in full agreement with this.

**Mr Martiniuk:** The government cannot support this resolution.

**Mr Kormos:** I just want to repeat what the PA said: The government cannot support the resolution. That's just in case any of the Tory members of the committee didn't



hear him the first time. The PA is telling you to vote against it. I just want to make that very clear. I'm just trying to be helpful, Chair.

1650

**The Chair:** Thank you, Mr Kormos. You're very helpful.

Further discussion in regard to Liberal motion number 9?

Seeing none, a recorded vote.

### Ayes

Castrilli, Curling, Kormos.

### Nays

Hudak, Martiniuk, Rollins, Stewart, Bob Wood.

**The Chair:** I declare the motion defeated.

Committee motion number 10, an NDP motion.

**Mr Kormos:** I move that subsection 5(2) of the bill be struck out and the following substituted:

"Composition

"(2) The board of directors of the corporation shall be composed of 11 persons appointed by the Lieutenant Governor in Council after public hearings are held on the matter.

"Public hearings

"(2.1) The Attorney General, the law society and any other person or group who represents the persons and communities that use legal aid services may make presentations at the public hearings on the appointments.

"Chair

"(2.2) The members of the board shall appoint one of their number to be the chair."

This reflects what was put to the committee by a number of presenters. There was concern about the prescribed makeup of the board and the stranglehold the government had on appointments. This provides that appointments to the committee shall be done in a — it leaves the power with the Lieutenant Governor in Council, no two ways about it, and it doesn't restrict that power because it doesn't say that the nominees be approved. It merely provides for some transparency, consistent with the sort of proposal Ms Castrilli was making in her motion number 9.

Also, you heard quite clearly the proposition that the chair be chosen by the members of the board for the corporation. That is consistent with practice in any number of arena — is that the plural of "arena"? "Arenas" or "arena"?

**Ms Castrilli:** "Arena."

**Mr Kormos:** OK, thank you. I did it right the first time.

It's consistent with the practice in any number of arena that the board select its chair. I think it's a very healthy practice, and if the government is serious about making this an arm's-length body, it adds to the arm's-length nature of the relationship.

I'll be calling for a recorded vote, of course.

**Ms Castrilli:** I'm happy to support this amendment. It certainly reflects our views on this matter. It's consistent with what we have put in our motion number 12, but it goes one step further in that the members of the board can appoint from among their number, which was a recommendation we heard here.

I can't imagine what the difficulty would be with public hearings and a public appointment process. It's obviously what everyone who came before us felt was necessary. Part of the concern we've heard over and over again is that the way legal aid is actually administered, and how certificates are handed out, is not transparent. We've heard from many people who had felt quite excluded, not all of them individuals but professional groups who feel the process ought to be much more transparent and public.

I think this is a very good motion. I think it's precisely the direction we should be following. I cannot understand for the life of me why there would be any objection to making this corporation as strong as we can make it, and I think a public appointment process would do just that.

**The Chair:** Further discussion?

Seeing no discussion, I'll call for a recorded vote on motion number 10.

### Ayes

Castrilli, Curling, Kormos.

### Nays

Martiniuk, Rollins, Stewart, Bob Wood.

**The Chair:** I declare the motion defeated.

Motion number 11.

**Ms Castrilli:** I move that section 5 of the bill be amended by adding the following subsection:

"Non-voting member

"(2.1) One member of each advisory committee established under section 7, selected by the members of the advisory committee, shall be a non-voting member of the board."

The rationale here is very simple: The act creates a number of advisory committees, and it's been pointed out to us that it would be very useful to have the expertise of those advisory committees directly on the board as they make their decisions. But I think it would be presumptuous to give them a vote, and I think the corporation might be too unwieldy if everyone were to have a vote. But certainly the expertise of each committee could easily be available to the board members as they decide on important issues that govern the corporation. They would have a ready bank of experts to assist them in making the choices they will have to make if the corporation is to work successfully.

I trust there really isn't an issue with respect to this section. It doesn't change the composition of the board, and it doesn't change the substance of decision-making. It enhances the quality of the decision-making by having experts at the table to assist.

**The Chair:** Further discussion?

**Mr Martiniuk:** The government cannot support this amendment. We wish to get away from the resource disputes that have taken place in the law society, one by the criminal bar over the marital bar. It could create a great deal of tension. It would enlarge the board. Even though the person may not vote, they obviously have to have their say.

We already have advisory groups who no doubt will be presenting briefs and written requests to the board as to directions. To enlarge the board would make it unwieldy and could introduce a tension which is uncalled for in these circumstances. So we cannot support this resolution.

**The Chair:** Further discussion?

Seeing none, I shall call the vote on motion number 11. All those in favour? All those opposed? I declare the motion defeated.

Committee motion number 12.

**Ms Castrilli:** Chair, given that we disposed of number 10 of the NDP, number 12 may not be in order. It's withdrawn.

**The Chair:** It's withdrawn.

Committee motion number 13.

**Ms Castrilli:** I move that subsection 5(4) of the bill, exclusive of the paragraphs, be struck out and the following substituted:

"Criteria for appointment

"(4) In recommending persons to be appointed to the board, the Chair of the standing committee on administration of justice shall ensure that the board as a whole has knowledge, skills and experience in the areas that he or she considers appropriate, including the following areas."

And you'll see that those areas are set out in the act.

The rationale for this is self-evident. We want to make sure that we have individuals appointed to the board who have a broad range of expertise. Particularly since it appears that the public appointment process is not going to be a viable way of determining the diversity required for this board, I think it's even more critical to have this amendment inserted in the bill.

**The Chair:** Further discussion?

**Mr Kormos:** I agree with the intent of the motion and think I'm going to support it, but with some concerns. Ms Castrilli refers to the Chair of the standing committee on administration of justice. As it is today, that's you, and I frankly have confidence in you. But what if you were to fall into disfavour with the Premier's office and this \$11,000 or \$12,000-a-year perk — it is up around that range, isn't it, Chair?

**The Chair:** I think it's less than that.

**Mr Kormos:** Then 10.5 or 11 grand a year for chairing a committee here at Queen's Park. What if you were to fall into disfavour with the Premier? What if you were to receive information about the conduct of suburban males during the day of the Santa Claus Parade in downtown Toronto and be bold enough to tell the world? Or what if your own experiences led you to reach certain conclusions that compelled you to go to the press and basically reveal the sordid activities of yourself and col-

leagues as you witnessed them during the day of the Santa Claus Parade, such that you earned the opprobrium of the Premier? Then you wouldn't be our Chair any more. You'd be banished from those perk jobs like Chair, Vice-Chair, parliamentary assistant and what have you. Like some of us, you'd become one of the lowest-paid members of the Legislative Assembly, earning a mere \$78,006 a year rather than the approximately \$90,000 a year that you earn. Does your spouse know that you make that much money, Chair?

**Mr E.J. Douglas Rollins (Quinte):** She does now.

1700

**Mr Kormos:** Your spouse and kids have a right to know exactly how much money you make. You're taking in darned close to 90 Gs a year, and you're in the bracket where that 30% tax break starts to become considerable. That's why fair-minded people would advocate a repeal of the income tax cut for those earning in excess of \$80,000, those in the top 6% of income earners.

*Interjection.*

**Mr Kormos:** If Mr Martiniuk wants to speak to it, as soon as I'm finished —

**Mr Martiniuk:** On a point of order, Mr Chair: It has been pointed out to me that this may be out of order in that it refers to the Chair of the standing committee. I realize we've wasted time and I apologize for my tardiness, Mr Kormos. But since we defeated 9 and the Chair is not involved in the process, then one would think this should be out of order. We can discuss it if you want.

**Ms Castrilli:** Mr Chair, I had my hand up to say just that, but I didn't want to stop Mr Kormos in full flight.

**Mr Martiniuk:** And I didn't mean to be rude, Mr Kormos.

**The Chair:** And I wanted to earn my extra money to hear him.

**Mr Kormos:** Barely.

**Ms Castrilli:** Because we have dealt with the public appointment process and the role of the justice committee, this may be out of order and I'll withdraw it.

**Mr Kormos:** On the same point, Chair, I'm sure Mr Wood could advise us about the principle of estoppel. Seeing that this came on to the floor and Mr Martiniuk's point was not made, nor did the Chair rule it out of order, is the Chair now estopped from finding it —

**Mr Bob Wood (London South):** No, he's not estopped.

**Mr Kormos:** Hold on. I just put it to you, Mr Wood. Be more creative —

**The Chair:** Please, through the Chair.

**Mr Kormos:** You can manoeuvre your way around this. Mr Wood may be of some help. I don't know whether the Chair is estopped —

**The Chair:** The motion is withdrawn.

**Mr Kormos:** Well, Chair, that kills any further —

**The Chair:** We shall move to committee motion 14. Mr Kormos, with explanation, please.

**Mr Martiniuk:** Could I say a few words, Chair, just for a moment, just to clarify it for members of the opposition?



**Ms Castrilli:** Are you clarifying motion number 14?

**Mr Martiniuk:** No, another matter. I ask your permission.

**Ms Castrilli:** Absolutely. Go ahead.

**Mr Martiniuk:** I just want you to be aware, because we were dealing with the hearing process in determining the 11 members, that it would be covered by the standing orders on the standing committee on government agencies, which is empowered to review and report to the House. So these directors would be under standing order 105(g).

**Ms Castrilli:** I'd just like to respond briefly. We're well aware of that. The intent was to change the process, to make it a different public process, accountable to the Legislature in a different way through the standing committee on administration of justice. But I take your point and thank you for that.

**Mr Martiniuk:** I wasn't aware of that. I just wanted to clarify that point.

**Mr Kormos:** The PA's point is well made, and I'll address it in debate on my motion.

I move that subsection 5(4) of the bill, exclusive of the paragraphs, be struck out and the following substituted:

"Criteria for appointment

"(4) The Lieutenant Governor in Council shall ensure that the board as a whole has knowledge, skills and experience in the areas that were determined, in the course of the public hearings, to be appropriate, and in the following areas."

I hear what the PA says, that it's job of the standing committee on government agencies to deal with these things. However, I tell the parliamentary assistant that my experience with that committee is that it is so preoccupied with the Tory nominees, who can barely read or write and who are the crassest of political appointments, who are the real hacks, that it doesn't have time to delve into the finer areas —

**Mr Stewart:** On a point of order, Mr Chair: That is an absolutely disgusting comment and reflects on all the people, from all political persuasions, who have been appointed to many committees. I suggest that he withdraw his statement.

**The Chair:** I request that you withdraw, Mr Kormos.

**Mr Kormos:** No, thank you.

**The Chair:** So that members are aware, I have the ability to ask for a withdrawal but there is no obligation to follow through.

**Mr Kormos:** I was there, watching, listening.

**The Chair:** So you were.

**Mr Kormos:** Who was the fellow appointed to the Niagara Escarpment Commission? Do you remember that one?

**Mr Rollins:** He can read and write.

**Mr Kormos:** Fortunately, yes. That was the intimate of the member for Owen Sound, my good friend Mr Murdoch.

**The Chair:** Mr Kormos, just to inform you that committee motion 10 did not pass. Committee motion 14 is thereby out of order.

**Mr Kormos:** Hold on, Chair. You see, motion 10 is quite distinguishable. Ten was in effect an omnibus bill. You're familiar with those. Motion 10 covered a range of things, because it dealt with three different areas: composition, public hearings and Chair. If I had done this one before I did 10, I would be in a different position because —

**Interjection:** It hasn't been moved yet.

**Mr Kormos:** Quite right. Be cautious, Chair. It's a good thing you have the clerk with you to advise you on these things or else you'd find yourself in —

**The Chair:** I just think you brought that forward, Mr Kormos.

**Mr Kormos:** No. Look, Ms Grannum —

**The Chair:** Being cautious is the part that I should focus on.

**Mr Kormos:** Ms Grannum is brilliant and, as I say, we're all blessed to have her wise counsel at this hearing. It's a darn good thing too.

It's also a darn good thing we've got Laura Hopkins here from legislative counsel. I want to thank her for taking the submissions from both the Liberal caucus and the NDP caucus and trying to make them distinguishable, although I suspect they use different counsel for different caucuses when they're drafting legislation. That may not always be the case, which means that legislative counsel have to get the similar request and try to make one look a little different from the other by just slipping a word here or adding a word there. It's brilliant on their part.

I encourage support for this amendment.

**The Chair:** Further discussion? Seeing none —

**Mr Kormos:** A recorded vote, please.

**The Chair:** A recorded vote for committee motion 14.

## Ayes

Castrilli, Curling, Kormos.

## Nays

Martiniuk, Rollins, Stewart, Bob Wood.

**The Chair:** I declare the motion defeated.

Committee motion 15. Ms Castrilli with the explanation, please.

**Ms Castrilli:** I'd like to seek some guidance with respect to this motion because I see that there's a problem with it, but the intent of the motion is still very good and I'd like to find some way to still introduce it. What the motion says is that the Chair of the standing committee on administration of justice has a role to play in determining both the geographic and the demographic diversity of the board. We've now determined that the Chair of the standing committee on administration of justice will have no such role, but I'd hate to lose the latter part of the amendment, which deals with the importance of having demographic diversity.

Maybe what I will do — actually, as I read, I'm looking at motion number 16 that the NDP brought forward. I

will withdraw this one in favour of the NDP motion on 16 because I think they're essentially the same except for the change of the officer.

**The Chair:** Committee motion 15 is withdrawn. Motion 16.

**Mr Kormos:** I move that subsection 5(5) of the bill be struck out and the following substituted:

"Same

"(5) The Lieutenant Governor in Council shall ensure that the persons appointed to the board under subsection (2) reflect the geographic and demographic diversity of the province."

This is identical to Ms Castrilli's motion but for the fact that it puts the responsibility on the Lieutenant Governor in Council as compared to the Chair. I quite frankly think she was a little hasty to withdraw her motion because, quite frankly, it could have stood on its own. Once we pass Bill 25, then legislative counsel could have rewritten basically all the rest of section 5 to give effect to 5(5) that Ms Castrilli has introduced here. We'll be talking about that further as we debate Bill 25.

We were supposed to have debated it tonight. Unfortunately, Bill 22 is coming up so we won't get around to Bill 25 and the undemocratic schedule C, that new act that permits legislative counsel to rewrite legislation — the bureaucracy. It's scary stuff. I can see the frown on your face and the look of trepidation in your eyes. It is frightening, and it doesn't bode well for the future of this province.

In any event, we're dealing with my amendment. Again, it expands the initial requirement beyond geographic diversity. It talks about the demographic diversity. That entails a large number of healthy considerations and it puts that responsibility on the Lieutenant Governor in Council as compared to the Attorney General who, I've learned, you couldn't trust if your life depended on him. Look, after all, at what he did to the family support plan in Downsview.

**The Chair:** Further discussion?

**Mr Curling:** I think it's an excellent amendment because the fact is that many of the presentations you've heard, especially with the African Canadian legal clinic and the others, spoke very much about the changing demographics of Ontario. As a matter of fact, your bill mentioned that. Here's an opportunity to make those changes to make sure this happens in the right place and make sure it doesn't slip through the cracks in any way.

1710

We know how important it is, especially this legislation and who have been excluded from getting good legal representation — not only getting it but also understanding it. No better persons can do that than those who comprise the individuals who are being served. I'm talking about the diversity in our community, which is changing so rapidly. Many times, with all respect to the wonderful, great judges and lawyers, I find a sense of naïveté in even some of the presentations about what's going on in the courts. I think a committee of this nature, having that

demographic diversity, will be sensitized and have a better understanding of what goes on.

I am completely convinced that the backbenchers in the Conservative Party will warmly and quickly support that to make sure this doesn't slip through the cracks of some group other than what is asked here. Here is a great opportunity to do that. It then recognizes the changing demographics in our society.

For instance, in my community of Scarborough North a third of the people are Chinese; 41,000 people are of Chinese extraction. I know that if we have any kind of committee it would be ludicrous, it would be completely out of whack and undemocratic if we did not have an individual of the Chinese community representing us on our committee. We would have excluded a third of our population representation there.

But again, we've got to make sure this is done in the proper way, and I fully support this amendment. I know that the members here see it that way and will be supporting this amendment.

**The Chair:** Further discussion? Seeing none, I shall call the vote on committee motion 16.

**Mr Kormos:** Recorded vote.

**Ayes**

Castrilli, Curling, Kormos.

**Nays**

Martiniuk, Rollins, Stewart, Wettlaufer, Bob Wood.

**The Chair:** I declare the motion defeated. Committee motion 17.

**Ms Castrilli:** I move that section 5 of the bill be amended by adding the following subsection:

"Chair

"(7.1) The Lieutenant Governor in Council shall appoint as chair of the board that person of the 11 persons appointed under subsection (2) who is recommended for the position by the Chair of the standing committee on administration of justice."

Here again we have a problem that I'd like to raise because the intent is a good one, but we're dealing with the problem that we've disqualified the Chair of the administration of justice committee, or perhaps we haven't. I'd like some discussion on that.

The intent is to make the Chair appointed through some other means than what we've had so far. Under motion 10 that the NDP introduced, we were looking at a method of having the Chair at least being chosen from among the members themselves. What we're trying to avoid is an appointment process that is totally controlled by the Attorney General. It's not what people want, it's not what we heard and I don't think it does the system any credit.

This motion would allow at least some other body, some entity other than the Attorney General, to have a say on who should be the chair of the corporation and hopefully have more accountability and impartiality.



**Mr Kormos:** I think the amendment stands by itself because internally it says exactly what it says. There's an implication that, as a matter of fact, the Chair is nothing without his or her committee. Think about that. You're nothing without your committee.

**Mr Martiniuk:** I thought he was going to say something nice for a moment.

**Mr Kormos:** Without your committee you're just another MPP. You're only a Chair by virtue of the committee, so by implication it means that the Chair runs the selection through some sort of process. I think it's a valid amendment and I think it begins to depoliticize this appointments process and warrants the enthusiastic support of all fair-minded members of this committee.

**The Chair:** Further discussion? Seeing none —

**Mr Kormos:** Hold it, Chair. I think the parliamentary assistant should have an opportunity to instruct his members in how to vote.

**The Chair:** Thank you, Mr Kormos. He certainly has.

**Mr Kormos:** You saw that wink.

**Mr Curling:** You didn't see the signal.

**The Chair:** That was the opportunity I was referring to.

**Mr Kormos:** I thought that gesture implied that you were still number one, Chair.

**The Chair:** Seeing no further discussion, I shall call the vote on committee motion 17.

**Mr Kormos:** Recorded vote.

### Ayes

Castrilli, Curling, Kormos.

### Nays

Martiniuk, Rollins, Stewart, Wettlaufer, Bob Wood.

**The Chair:** I declare the motion defeated.

Committee motion 18. Ms Castrilli with explanation, please.

**Ms Castrilli:** I'm going to withdraw the motion because, as I read it, it's incomplete and I think there's a fuller text in the NDP motion number 19.

**The Chair:** Thank you. Committee motion 19.

**Mr Kormos:** I move that subsection 5(10) of the bill be struck out and the following substituted:

"Vacancies

"(10) If a position on the board becomes vacant, a replacement shall be appointed by the Lieutenant Governor in Council, having regard to the concerns expressed in the public hearings held to appoint the person whose position is being filled and, until the replacement appointment is made, the board may continue to act."

It's self-explanatory; it speaks for itself. Recorded vote, please.

**The Chair:** Further discussion? Seeing none, all those in favour of committee motion 19?

### Ayes

Castrilli, Curling, Kormos.

### Nays

Martiniuk, Rollins, Stewart, Wettlaufer, Bob Wood.

**The Chair:** I declare the motion defeated.

Shall section 5 of the bill carry? All those in favour? All those opposed? I declare section 5 carried.

Section 6, committee motion 20.

**Ms Castrilli:** I move that paragraphs 1 and 2 of subsection 6(4) of the bill be struck out and the following substituted:

"1. Six members shall hold office for three years.

"2. Four members shall hold office for two years."

The reasoning behind this is to provide some kind of continuity for the corporation so that as some people leave, others come on stream, but there's always a body of people that will remain to give some guidance. It also provides for more chance of renewal and therefore more input from the public, assuming that the corporation will in fact respect and reflect the demographic as well as the geographic makeup of this province.

**The Chair:** Further discussion? Seeing none, I shall call the vote on committee motion 20. All those in favour? All those opposed? I declare committee motion 20 defeated.

Number 21 is identical.

**Mr Kormos:** Give us a chance to withdraw it. I saw that it was identical.

**The Chair:** We shall certainly give you that opportunity.

**Mr Kormos:** Thank you. Did he withdraw it? I withdrew it twice already.

**The Chair:** Thank you, Mr Kormos. At that, shall section 6 of the bill carry? All those in favour? All those opposed? I declare section 6 of the bill carried.

Section 7, committee motion 22.

**Ms Castrilli:** I move that subsection 7(1) of the bill be amended by inserting "aboriginal law, immigration law, mental health law" after "family law" in the second line.

I think the intent is clear. We had much representation here about these areas of the law which are nowhere mentioned, which are excluded but yet very important areas of the law which require the attention of any corporation that deals with justice and legal aid.

1720

**Mr Kormos:** I suppose I anticipate what the government response might be, and that is, "Well, take a look at subsection (2), which says that the board has unlimited capacity to establish advisory committees." If that were the case, then the government shouldn't have included subsection (1). If the government would rely on subsection (2), then why bother having subsection (1)? Why would the government make it mandatory that the board establish advisory committees in criminal, family and clinic law and then leave everything else discretionary?

Clearly, when this piece of legislation was put together, some areas of law were regarded as fundamental. I don't think anyone takes quarrel with the fact that criminal law, family law and clinic law are fundamental. But after hearing what we did about aboriginal law, and the role of the one clinic that we heard from here in Toronto, surely that is as fundamental as the three already cited — similarly said with immigration law and mental health law. I think these are too important to be left up merely to the discretion of the board. If anything, they should be included to illustrate to the board that the bill expects a broad range of areas to be considered by way of advisory committees on the part of the board, including but not limited to those three already added by this amendment and others that the board may deem advisable.

**Mr Curling:** I hope that one day, even before I leave this place, the common individual, the common man and the common woman outside, reading a law is able to understand it fully and know that there's no exclusion. I fully agree with this motion here, and also with the support of Mr Kormos, wherein someone who would flip the book open would realize that not only are criminal law, family law and clinic law included, but also that they can see in there aboriginal law, immigration law and mental health law. The fact is that when they look there, they can know that their rights are being protected right there in black and white and they don't have to read into it to say, "Well, it says the advisory board may do or shall be determined by or do other things to include," but it is all written there. Here's a great opportunity to make people feel that laws are made by them and for them.

In this respect I know that the inclusiveness of the caucus of the Conservatives would say: "You know, you're right. I think here we're going to include these individuals, so that when those outside are looking for some protection, they'll know what laws cover them, that laws are made for them." They themselves have had their input. All the presentations were made, people have talked about them and there are certain things they wanted to be confident would be included and that they are there. I'm confident that the members of the Conservative side will fully support this amendment.

**The Chair:** Thank you, Mr Curling. Further discussion? Seeing none —

**Mr Kormos:** Recorded vote.

#### Ayes

Castrilli, Curling, Kormos.

#### Nays

Martiniuk, Rollins, Stewart, Wettlaufer, Bob Wood.

**The Chair:** I declare the motion defeated.

Committee motion 23, with explanation, Ms Castrilli.

**Ms Castrilli:** I move that section 7 of the bill be amended by adding the following subsection:

"Same

"(1.1) The board shall establish an advisory committee in French language services."

The concern here is very real. The Association des juristes d'expression française de l'Ontario told us that as it stands, clinics provide not even the minimum required under the French Language Services Act. There are designated areas of the province — that is designated to have services in French — that are not providing legal aid in any of their clinics.

Part of the solution could be to have an advisory committee in the French language which would be of assistance to the board in pointing out the deficiencies that are occurring all over the province. We've certainly had instances in this Legislature where French-language rights have been eroded or were about to be eroded except for the vigorous intervention of the French-language community and of course members of this Legislature.

This is an opportunity to do something right, to say that legal aid is not going to fall behind, that we are going to provide the services required to French-speaking Ontarians as we are required to do under our legislation. I think it's self-evident. I can't imagine why we wouldn't do it. Basically, it's not even guaranteeing a minimum, but it is telling them that we want to make sure we observe our obligations under existing legislation.

**Mr Kormos:** I think this is a very important amendment. It ties in with an exemption for the interim stage of legal aid that you find in the latter part of the bill — appreciating that the section purports to repeal itself at an indicated date — but the exemption of the bill from Bill 8, from the French Language Services Act.

You heard about some of the difficulties francophones have accessing French-speaking counsel. That alone was obviously a consideration. And you know that we have many lawyers who — and no disrespect to them — notwithstanding that they're francophone Canadians in terms of their mother tongue, their francophone skills don't embrace, for instance, the area of technical and legal terms. The suggestion here is that an advisory committee could address any number of areas in the way of improving that.

When we think about the legal education aspect and in terms of quality assurance, one could consider any number of areas from the point of view of, for instance, undertaking to deal with language skills of francophone lawyers who may have French as their mother tongue, their birth tongue, whatever the popular word is, but who may not have been educated in the French language in law school, and so they don't have those skills.

As you well know, I come from Welland-Thorold. You've heard about the prospect, the potential, the likelihood of merger of legal aid regions, and I'll give you a for-instance. We have section 22, which talks about the appointment of directors. Do you remember that, Chair? We talked about the appointment of directors. We talked about an area director who could not render legal services — not legal aid services but legal services. Obviously it would be virtually impossible for a part-time director who was a lawyer, because they have to be lawyers, not to participate. As a part-time person you're not going to make enough to carry you. It's not insignificant, but a



part-time director tends to make a modest amount, insofar as I'm aware. So the suggestion is that there's going to be a drive to get rid of part-time directors. That's the suggestion, because it's accompanied by the power of the corporation to merge areas. And the only way you could justify a full-time director in many regions now, I suggest to you, is if they were merged.

So you have a scenario like in Niagara: Niagara North, old Lincoln county; Niagara South, old Welland county. Welland is the county seat for Niagara South, and St Catharines obviously for Lincoln, Niagara North. The legal aid office in Welland is in a Bill 8 community. Bill 8 communities, and help me with this if I need assistance, are municipalities, not regional municipalities. Even though Welland and Port Colborne, within the Niagara region, are Bill 8 communities, the regional municipality of Niagara is not a Bill 8 region.

Court services are based in Welland because it's the county seat, and we have the application of Bill 8 to provincial services. Therefore we have bilingual services, not just in the courtroom but in the court office, among other things. In view of the fact that the Bill 8 application is to old-style municipalities, not to regional municipalities, what happens? First of all, it would be a disaster to centralize the legal aid office in Niagara region, because although it's in a densely populated area, unlike let's say the north, we don't have intercity transportation. You don't have buses travelling from Welland to Niagara Falls to Fort Erie etc. Because of government downloading, we've even lost a lot of our internal municipal transit. So transportation is a serious problem. You can't even call from one part of the region to the other without a long-distance phone call. That's how sad the state of affairs is. To call Fort Erie from Welland, you have to pay long-distance. To call Niagara Falls from Welland, you have to pay long-distance. From Welland to St Catharines you don't have to. In any event, that would be a problem.

1730

The other problem would be that if the legal aid office happens to be situated, let's say, in St Catharines, is it then exempt from Bill 8, because the city of St Catharines clearly is not a Bill 8 community? I don't know what the language is, but the lower-tier municipalities, if I can use that to describe the old-fashioned cities, seem to be the ones that are impacted by Bill 8, not the regional municipalities. I repeat: Just because Port Colborne and Welland, both Bill 8 communities, are components of the regional municipality of Niagara, that doesn't make the regional municipality of Niagara a Bill 8 municipality. Bill 8 appears to have no application to regional municipalities.

This is just an aside. This is a cheap shot at the government backbenchers, but I should mention —

**Mr Wayne Wettlaufer (Kitchener):** It's a cheap shot.

**Mr Kormos:** It's a cheap shot at the government backbenchers. I should mention when the last government felt compelled to give effect to Bill 8 by introducing bilingual signs on provincial highways — remember that? — and they were so modest in number. In Welland it amounted to

maybe three signs. But all heck broke loose from what was then the third party. Do you remember that, Chair? You were watching it on television. Boy oh boy, did they ever try to push the button about anti-francophone sentiment. All the money spent on those highway signs, but have you seen those highway signs now, the ones that say, "Ontario, blah, blah, blah, Mike Harris, Premier of Ontario"? Those modest, few French-language signs cost nothing compared to the millions of dollars this government has spent hyping their government. It's just incredible. This government had no hesitation putting those up in both languages. As a matter of fact, they didn't even put them on the same sign. They have two different things, one in English and a subsequent one in French. They didn't even make bilingual signs.

**Mr Wettlaufer:** Are the French not entitled to the same respect as the English drivers?

**Mr Kormos:** Talk about an outrageous waste of money. They could have put both languages on the same sign. This government doesn't care about the stewardship of taxpayers' dollars. They spend it willy-nilly on advertising and internal propaganda.

As I say, that was just an aside and an observation because, boy, did these guys squeal. They squealed like pigs. They squealed like the proverbial stuck pig, and really inflamed the anti-francophone sentiment. I don't have to tell you how dangerous that was in the context of, let's say, constitutional debate. Do you remember the flag incident in Cornwall? That was the sort of stuff that was being inflamed by the anti-Bill 8 sentiment of this government when they were members of the third party. I would hate to see them revert to type and merely exploit anti-francophone sentiment by rejecting this amendment. I suggest that there could be some atonement here for —

**Ms Castrilli:** That's a good word.

**Mr Kormos:** — the bitterness and vileness of their attack on French-language rights when it came to highway signs.

**Interjection:** Born again.

**Mr Kormos:** In effect, they could repent, an expression of atonement, by supporting this amendment and demonstrate that they're not anti-francophone after all.

**The Chair:** Thank you, Mr Kormos. I'm sure your francophone constituents will well appreciate receiving that.

Further discussion?

**Mr Curling:** I want to commend the fact that this came forward, because French is an official language of Ontario, and also English. If I was French-speaking and no services were available in my province, I'm sure that I would be completely upset. The fact is that I want to be served like anyone else, and the opportunity here to establish an advisory committee on French-language services is an excellent way to recognize that they are citizens of our province who should be served.

In my constituency office I have someone who's able to speak Cantonese and Mandarin, because people want access to services. And that is not an official language of

Canada. But with an official language, to have an advisory committee to assist in these services is excellent.

I would very much like to hear how the Conservative caucus feels about this. What is their feeling on this — not putting up their hands and saying yes, but some comments on how they feel about a French-language services committee being set up to deal with this matter. It would give us a good idea, as a collective group of parliamentarians, what services we're going to give.

I hope — and I'm sure Mr Kormos and the NDP support this, and we Liberals have expressed some views on this — we hear the views of some of the caucus, not just the parliamentary assistant giving instructions to put their hands up and vote against it. Give us your expression about this, so that later on maybe we can make amendments knowing what your thinking is. So if they don't want to support it, I encourage them to express how they feel about this.

**Mr Martiniuk:** I think this debate is very healthy and points out the difference between the government and the opposition parties. We are trying to establish an independent corporation that hopefully will benefit the most needy of our province. We the government believe we should give them the flexibility required. The opposition parties say, "Yes, we'll give them flexibility, but we're going to give them very little flexibility." It reminds me of a mother whose son has grown up — I'm not just picking on mothers —

**Ms Castrilli:** Be careful, there are mothers in the room.

**Mr Martiniuk:** — fathers, too, whose children have grown up to the stage that they're adults, and they say to them: "Go out in the world; you're an independent person." Yet they try to hold on to that child. Let this corporation grow up and be an adult. That's what it's there for. It's supposed to be independent. Let's let go.

**Ms Castrilli:** Thank you for putting it on the line, Mr Martiniuk, but that's not what this amendment is all about. What we're trying to accomplish here is to honour our obligations under the law. That's what we as legislators must do. I would have thought you would say to me, "But there is a French Language Services Act, and that should apply and that should be the end of it." But that is not the end of it. You didn't advance that, but I'm advancing it for you. That is not enough, because we've heard from the French-speaking lawyers in our midst that there isn't now the respect of the law that exists. There isn't now a clinic in designated areas that deals with French language. This is part of the problem.

We're saying that it has to be addressed in this legislation. You may argue that we have refused to set up advisory committees in other areas, and I say to you that that's really too bad, because they would have been very useful. But you must admit that this committee is different from the others in that there is an obligation in law to make sure we provide services to French-speaking citizens and residents of Ontario.

I don't understand why you would try to deep-six this provision, which does nothing other than say what's

already in law: that we have an obligation to ensure that there are French-language services in this province. That's all the amendment does. It doesn't create any new, substantive obligation for this corporation. But it makes very clear that we will not tolerate an Ontario that sets up designated areas where we're supposed to provide French-language services and then we don't in this very important area.

**The Chair:** It being past 5:30, Mr Kormos.

**Mr Kormos:** Thank you, Chair. If the parliamentary assistant wants to analogize this bill with a child, then I say it's surely Rosemary's Baby.

But I want to put this to the Chair: I would hope that you, considering the community you represent, would want to have a chance to demonstrate your support for francophone rights. I'd be willing to take the chair briefly during the vote, forfeit my right to vote on this matter — people well know where I stand — so that you would have a chance in a recorded vote to express your support in a courageous way, in a bold way and in a way that expresses your support for francophone rights in this province.

1740

I'm indicating to you that I'll be more than pleased to take the chair for the 30 seconds or minute or so. I won't expect to be paid what the Chair earns; I'll do it pro bono, as they say. I'm willing to take the chair for you so that you can vote on this matter. One of the difficulties the Chair has is that the public doesn't really know where you stand on francophone rights, do they?

**The Chair:** No, Mr Kormos. One of the difficulties —

**Mr Kormos:** As Chair, you're not entitled to let them know. But I'm willing to relieve you of that onerous responsibility for the 60 seconds it would take to engage in a recorded vote, and no favour expected in return.

**The Chair:** One of the difficulties is ensuring the smooth transition of discussion during this committee, and we're certainly having that.

Further discussion?

**Mr Curling:** There's no discussion from over there.

**Mr Martiniuk:** I want to make it clear that we're not talking about French language rights. This government has taken the step of introducing section 81:

"The French Language Services Act does not apply to the corporation but the corporation may, if it considers it appropriate, provide any services in French."

That section is repealed as of April 1, 1999, and will therefore come into force and the French Language Services Act will apply to this corporation.

By the way, it did not apply to the law society, which is not a crown corporation but a private corporation. So we've taken the step to ensure protection of French language rights under this act. What we're talking about is whether we're going to fetter the discretion of this corporation. That's all we're talking about. The opposition still wants to put up roadblocks to the efficient operation of this corporation, and the government would like to give it some degree of discretion. It can at any time set up in the corporation, if needed — if they believe it is required — a



committee dealing with this subject, along with many other committees.

Again, let's give them a chance. Let's set up this corporation with some discretion instead of trying to fetter its discretion time and time again with these amendments. Let's give them a chance to grow up and walk on their own two feet.

**The Chair:** It being past 5:45, we move to Ms Castrilli.

**Ms Castrilli:** I'm glad you're keeping track of the time, Chair. I'm really puzzled by the parliamentary assistant's response, and I hope the parliamentary assistant isn't going to go far as I respond to his comments. How can you possibly deem that an advisory board on French-language services would be an obstacle to this corporation? It's entirely the opposite. What we're trying to do is ensure that it's clear that French language services are protected.

Lest there be any doubt, I want to refer for a moment to the brief that was presented to us by the Association des juristes d'expression française de l'Ontario. They say very clearly:

"At present, the legal aid services offered to Franco-Ontarian communities are inadequate. Only three legal aid clinics are deemed capable of offering services in French....

"Over the years, our association has received numerous complaints about the weak level of service at some regional offices in the present legal aid system."

Then they go on to list a whole series of complaints.

What we're saying here — and, Chair, I say this through you to the parliamentary assistant — is that we've been doing a lousy job. We have an act that says we are going to provide services. We've not been providing services and we're asking for clarity in this piece of legislation. More than that, we're asking for some assurance, and that an assurance can come from an advisory committee that will defend and support the interests of the Franco-Ontario community so we don't have to have these kinds of discussions every three or four months in the Legislature.

**Mr Martiniuk:** I think this is really important. I just finished saying that the French Language Services Act did not apply to the law society. They breached no obligation because they did not have one. That's why this government has, in protection of French rights, ensured that the French Language Services Act will apply to this new corporation, whereas it did not in the past. To say that the law society has done a bad job of providing these services in the past is really irrelevant, because they did not have the obligation. This corporation will have the obligation. I am certain it will protect French language rights, as they should be, in our province.

**Mr Kormos:** The Chair understands the scenario I've described about regional municipalities versus what I call lower-tier municipalities, historical municipalities, in the application of the French Language Services Act.

**The Chair:** Bill 8.

**Mr Kormos:** Bill 8. It's calculated on the basis of French-language population vis-à-vis historical or lower-

tier municipalities. Obviously, if you took regional municipalities you'd be hard pressed to get the percentage of francophone population to get it within the scope of Bill 8.

Considering that, and having considered the prospect of merging of regions, this government may well take the legal aid office out of Welland and centralize it in St Catharines, which would relieve it of any Bill 8 obligation, if in fact there is a Bill 8 obligation, because Mr Martiniuk has been very bold in his statements. Does Bill 8 apply to — what are these, schedule 3 agencies; arm's length corporations? These are not government services.

I put the question, because I quite frankly don't know: Does Bill 8 apply to schedule 3 agencies? He makes reference to section 81. If Bill 8 applies *prima facie*, I don't think there's a power to legislate out of application. Do you understand what I'm saying, Mr Rollins? Section 81 says the French Language Services Act doesn't apply. You can't go around legislating yourself out of obligations, out of responsibilities.

Section 81 is interesting because if it does apply, it seems to me that to exempt yourself from it without amending the French Language Services Act is to no effect. You can't do it unless you amend the French Language Services Act. As I say, section 81 is a strange little section, because subsection (2) simply repeals subsection (1). It doesn't go on to say "in subsection (3)," which says that the French Language Services Act shall apply to business conducted by the corporation.

It's not as clear as you declare it to be, Mr Martiniuk. Where is it applicable? Is it applicable in head office, when in fact head office is in Toronto? Toronto, as you know, is a Bill 8 community. What if it's in some other community? We don't have any *prima facie* obligation for the centralized services to be French-language services if they're not government services.

Where in the French Language Services Act are schedule 3 agencies bound and how are they bound? Are they bound municipality to municipality depending on where they're operating or where they're located? I know you, as the parliamentary assistant, would be on top of this. I wouldn't have put this to you if I thought I was putting you on the spot. I know you've been talking about Bill 8 and the application of the French Language Services Act. So I would appreciate your insights, having briefed yourself on this prior to this afternoon.

**The Chair:** Further discussion?

**Mr Kormos:** If I may, Chair.

**The Chair:** Yes, Mr Kormos, you may.

**Mr Kormos:** I presume the parliamentary assistant is declining to respond.

**Mr Martiniuk:** Not at all, Mr Kormos. I will answer that question, but not at this moment. You have posed an excellent question, a rather complex question. I think I ought to give it due consideration, and you will be provided with my answer. Thank you.

**The Chair:** Further discussion?

**Mr Kormos:** Gosh, Bill 8 is not that lengthy a bill and it's not complex. I know Mr Martiniuk may not be able to quote it verbatim today, but I know he's read it suffi-

ciently recently to respond to the very simple query of whether it applies to a schedule 3 agency, which is what this corporation purports to be. But fair enough: If he needs time, perhaps he wants to read the bill in French as well as English, to search for any discrepancies.

1750

**The Chair:** Further discussion?

**Mr Martiniuk:** Let's not stop now.

**Ms Castrilli:** We'll be happy to continue.

**The Chair:** Seeing none, I shall call —

**Mr Kormos:** Recorded vote.

### Ayes

Castrilli, Curling, Kormos.

### Nays

Martiniuk, Rollins, Stewart, Wettlaufer, Bob Wood.

**The Chair:** I declare the motion defeated.

Shall section 7 of the bill carry? All those in favour? All those opposed? I declare section 7 of the bill carried.

Discussion on section 8?

**Mr Kormos:** One moment.

**The Chair:** One moment it is. Discussion on section 8? Seeing no discussion, shall section 8 of the bill carry? All those in favour? All those opposed? Carried.

Section 9, committee motion 24. Ms Castrilli with an explanation, please.

**Ms Castrilli:** Before I start, I want to point out, because we've been accused on this side of trying to fetter the corporation, that the last few sections that were passed were in fact sections that were correctly written to allow flexibility and you didn't hear any complaints from this side of the table. So let's be careful what we say in the future about where we stand on these things.

I move that subsections 9(2), (3) and (4) of the bill be struck out and the following substituted:

"Composition

"(2) The transitional board shall be composed of five persons appointed by the Lieutenant Governor in Council on the address of the assembly after consultation with the Chair of the standing committee on administration of justice.

"Public hearings re appointment of members

"(3) Before the Lieutenant Governor in Council consults with the Chair of the standing committee on administration of justice respecting the appointment of the members of the transitional board, the standing committee shall hold public hearings on the appointments and shall hold public interviews of the candidates it considers appropriate.

"Criteria

"(3.1) The Chair of the standing committee on administration of justice shall ensure that the persons recommended for appointment to the transitional board reflect the geographic and demographic diversity of the province.

"Chair

"(4) The Lieutenant Governor in Council shall designate as chair of the transitional board the member recom-

mended for that position by the Chair of the standing committee on administration of justice."

This really arises out of two sets of concerns that we heard here. We had Professor Fred Zemans of Osgoode Hall who told us he was very concerned about the transitional board, how it would operate and on what basis. We've heard others say as well that there should be some transparency and that the transitional board should be appointed on more or less the same basis as the permanent board, partly because the work they will do will determine the future of the corporation, and if the transitional board does not reflect that diversity that we've been talking about, the direction of the corporation may go down a certain path which will not be at all what we expect. They will in fact fetter the corporation in a way that we don't want, and this is tied to a subsequent motion which limits the amount of time that the transitional board can serve, because again if they're in place for too long a period of time, there would be very little for the corporation to do that is independent. That's the reason for this motion.

**Mr Kormos:** It's been noted, and Ms Castrilli has referred to this, that the transitional board really has a short-lived but an incredibly important function. This provides some appropriateness to the appointment, and we support this amendment.

**The Chair:** Further discussion? Seeing none, I shall call the vote.

**Mr Kormos:** A recorded vote, please.

### Ayes

Castrilli, Curling, Kormos.

### Nays

Martiniuk, Rollins, Stewart, Wettlaufer, Bob Wood.

**The Chair:** I declare the motion defeated.

**Mr Kormos:** I move that subsections 9(3) and (4) of the bill be struck out and the following substituted:

"Public hearings

"(3) The appointments to the transitional board shall be made after public hearings are held on the matter at which the Attorney General, the law society and any other person or group who represents the individuals and communities that use legal aid services may make presentations.

"Chair

"(4) The members of the transitional board shall appoint one of their number to be the chair."

This is consistent obviously with prior amendments that have been made. I appreciate those prior amendments haven't been approved, however this is with respect to the application of the transitional board. I've indicated the transitional board has some special significance because, although short-lived hopefully, it's dealing with the administration of legal aid over a critical time and it's all that much more important that this transparent and public process of appointments take place.



**Ms Castrilli:** I would of course have preferred that our amendment had passed, but I can certainly support this amendment. I think it accomplishes some of the same things. I just want to echo again that the transitional board should not be overlooked. It is a very critical component of this legislation. Witness what is happening in other areas where a transitional board has gone in pursuant to a direction of this government. It's critical that they be impartial, that they be reflective of the entire community in Ontario, and I think the process that is envisioned in this motion will assist in achieving just that.

**The Chair:** Further discussion? Seeing none —

**Mr Kormos:** A recorded vote.

### Ayes

Castrilli, Curling, Kormos.

### Nays

Martiniuk, Rollins, Stewart, Wettlaufer, Bob Wood.

**The Chair:** I declare the motion defeated.

Committee motion 26. Ms Castrilli with the explanation, please.

**Ms Castrilli:** This is the other motion that I was alluding to before.

I move that subsection 9(6) of the bill be amended by inserting "not later than six months after the day the transitional board was appointed" after "day" in the second line.

This has come about as a result again of Professor Zemans's concerns, which have been very well documented not only in this committee but elsewhere. There has even been an opinion by the Ontario Lawyers Weekly indicating that this should not be a board that continues for a very long period of time. This provides a sunset clause so that we can get on with the business of the corporation and not have this transitional board in place indefinitely. Six months, I think, is a reasonable time to consider and we're putting that forth.

**The Chair:** Further discussion? Seeing none, I shall call the vote on committee motion 26.

**Mr Kormos:** A recorded vote.

### Ayes

Castrilli, Curling, Kormos.

### Nays

Martiniuk, Rollins, Stewart, Wettlaufer, Bob Wood.

**The Chair:** I declare the motion defeated.

Mr Kormos, committee motion 27.

**Mr Kormos:** This is a motion indexed as number 27. The original one filed is a superior example of a word processor run amok. It is so full of typographical errors that I've provided the clerk and the members of the committee with a corrected version of it. As I say, the typographical errors in the first one make it almost incoherent.

I don't know what happened there, but that's what happens with technology and computers.

I propose to move that subsection 9(6) of the bill be amended by inserting after "on" in the first line "the earlier of the first anniversary of the day the transitional board was appointed or."

**The Chair:** One moment.

**Mr Kormos:** It's your call, Chair.

*Interjections.*

**The Chair:** As it stands, it appears to be a technical drafting error. I will rule in favour of the changes as presented and allow discussion to come forward. Mr Martiniuk.

**Ms Castrilli:** Could I have a point of clarification before we go forward? Could somebody read to me the entire section as it now stands because it's still very confusing.

**The Chair:** Can we have a copy of the amendment?

**Ms Castrilli:** I'd like the whole section. I can understand the amendment. I'm just not sure what it actually says when all is said and done.

**The Chair:** Sure. Legislative counsel, please.

**Ms Laura Hopkins:** Subsection 9(6) of the bill would read:

"Transitional board is dissolved on the earlier of the first anniversary of the day the transitional board was appointed or the day that the first board is appointed under section 5."

**Ms Castrilli:** OK.

**Mr Kormos:** I should indicate my appreciation to Nancy Austin, who's the director of the legal aid project, and to legislative counsel, Laura Hopkins, in helping me to decipher the typographical errors in the first version of this amendment.

This gives effect to again the requirement — Ms Castrilli expressed it in her motion just prior to this one — the desirability of a sunset provision for the transitional board. The time frame here is one year or the lesser period; in other words, at the time of the appointment of the permanent board. It responds to concerns raised during the committee. I'll leave it at that.

**Mr Martiniuk:** I think a number of presenters indicated that there should be some sunset provision and on behalf of the government we're pleased to support Mr Kormos's amendment.

**The Chair:** Further discussion?

**Mr Kormos:** One minute.

*Interjections.*

**Mr Rollins:** We're right up against the wall.

**The Chair:** Prior to reconsidering, seeing no further discussion, I shall call the vote.

**Mr Kormos:** A recorded vote, please.

### Ayes

Castrilli, Curling, Kormos, Martiniuk, Rollins, Stewart, Wettlaufer, Bob Wood.

**The Chair:** I declare the motion carried.

At that, this committee rises until tomorrow.

*The committee adjourned at 1802.*











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Deuxième session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 24 November 1998

# Journal des débats (Hansard)

Mardi 24 novembre 1998

Standing committee on  
administration of justice

Legal Aid Services Act, 1998

Comité permanent de  
l'administration de la justice

Loi de 1998 sur les services  
d'aide juridique



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Tuesday 24 November 1998

Mardi 24 novembre 1998

*The committee met at 1530 in room 151.*

## LEGAL AID SERVICES ACT, 1998

## LOI DE 1998

## SUR LES SERVICES D'AIDE JURIDIQUE

Consideration of Bill 68, An Act to incorporate Legal Aid Ontario and to create the framework for the provision of legal aid services in Ontario, to amend the Legal Aid Act and to make consequential amendments to other Acts / *Projet de loi 68, Loi constituant en personne morale Aide juridique Ontario, établissant le cadre de la prestation des services d'aide juridique en Ontario, modifiant la Loi sur l'aide juridique et apportant des modifications corrélatives à d'autres lois.*

**The Chair (Mr Jerry J. Ouellette):** I bring this standing committee on administration of justice to order to further deal with clause-by-clause consideration of Bill 68, the Legal Aid Services Act. At this time we will continue on from where we left off yesterday. For future reference, I will once again be referring to the committee motions numbers at the upper-right corner.

**Mr Peter Kormos (Welland-Thorold):** On a point of order, Mr Chair: I'm wondering if the parliamentary assistant can respond to our query of yesterday regarding the application of Bill 8.

**Mr Gerry Martiniuk (Cambridge):** Yes. As soon as I'm briefed on it, I certainly will brief you fully on that, Mr Kormos. I fully intend that.

**Mr Kormos:** The process will be over by then.

**Mr Martiniuk:** No. I'm sure Nancy will be here soon.

**The Chair:** Thank you, Mr Martiniuk.

We now move to committee motion 28, with explanation, please.

**Ms Annamarie Castrilli (Downsview):** I move that section 12 of the Bill be amended by adding the following subsections:

"All areas of law to be considered

"(3) In establishing priorities under subsection (2), the corporation shall take into account the importance of all the different areas of law for which it provides legal aid services.

"Limitation

"(4) The priorities established by the corporation under subsection (2) shall not be used to deny legal aid services

to an applicant for legal aid services in the area of family law."

This addresses two issues that have come before this committee. The first is that there has to be sufficient attention given to all areas of the law and not just some as opposed to others.

Sorry, you asked for explanation?

**The Chair:** Yes. I'm afraid in my haste I've jumped the gun a little bit, shall we say. We need to go back to section 9 of the bill. We have not completed the voting on sections 9, 10 and 11 prior to jumping into section 12 where committee motion 28 is. Yesterday we completed committee motion 27. We now should be proceeding to voting on section 9 of the bill, as amended.

I shall put the question. All those in favour of section 9, as amended? All those opposed? Section 9 is carried.

Section 10: Discussion? Seeing no discussion, I shall put the question. Shall section 10 of the bill carry? All those in favour? All those opposed? Section 10 is carried.

Section 11: Any discussion? Seeing none, I shall put the question. Shall section 11 of the bill carry? All those in favour? All those opposed? Section 11 is carried.

We move to section 12 now, to committee motion 28. I might ask of the clerk, is it necessary to repeat the —

**Clerk of the Committee (Ms Tonia Grannum):** No.

**The Chair:** You may continue on with your explanation, please.

**Ms Castrilli:** As I was saying, this motion seeks to address two issues that we've heard about in this committee. The first is that there's obviously a discrepancy in the way that legal aid certificates are allotted, partly because of funding, partly because of other reasons, and we heard many people say to us that this causes particular hardship.

We've heard Professor McCamus indicate that there are many individuals who are now not represented at all because they cannot get a legal aid certificate. While I appreciate it comes down to a question of funding, I think it's also important to have in an act that seeks to have a new beginning with respect to legal aid that we would emphasize that all areas of the law are worthy of being supported in this fashion.

It's all the more important because, as you know, we tried to introduce amendments dealing with areas of the law that we think are particularly vulnerable. In particular, environmental law was defeated here. We've sought some assurance with respect to aboriginal law and have not



been given that. I think it's very important to have a sentence that says all areas of the law are equal.

The other point that it seeks to address comes from people who have had direct experience with family law and who came and told us that there's a particular area that needs to be looked at, and that's the area of family law, where so many people are unrepresented in the courts because there's simply no certificates. We've seen, for instance, that the number of legal aid certificates for family law has decreased astronomically in the last three years and the number of hours allotted under those legal aid certificates is a mere pittance: some 6.6 hours.

I would ask the members of the committee to view these in a favourable light and vote in favour of them.

**The Chair:** Further discussion? Seeing no further discussion, I shall put the question. Shall committee motion 28 pass? All those in favour? All those opposed? I declare the motion defeated.

**Mr Martiniuk:** Perhaps I could answer Mr Kormos's question. It was a very precise and interesting question and, if I may, I will present the reply.

Application of the French Language Services Act to the corporation, and we're talking about the new corporation:

Section 81 of Bill 68 provides that the FLSA will apply to the new corporation effective April 1, 1999.

Once the FLSA applies to the corporation, the corporation will be required to provide French-language services as follows:

Services in French must be available at the head or central office of the corporation.

The FLSA has designated 23 areas in the province as French-language service areas. Generally, all offices of the corporation — eg, local offices — located in these 23 designated areas must provide services in French subject to the following exception: If more than one office is providing the same service in a designated area, the LGIC may designate one or more of these offices to provide services in French if this will ensure reasonable access to the French-language services in that area.

Any office of the corporation located in a non-designated area but serving a designated area must provide French-language services.

Second, dealing with application of the FLSA to community legal clinics — I believe that was the second part of your question — community legal clinics will be legally separate from the new legal aid corporation. Although they will be funded by the corporation, they are separately incorporated legal entities and therefore will not be automatically subject to the FLSA on April 1, 1999.

Clinics located in one of the 23 designated areas only become subject to the FLSA if they have requested and have been designated under the act.

The corporation could require a clinic to apply for designation as a condition of receiving funds from the corporation.

Once the corporation takes over the administration of legal aid, it will be looking at how best to provide French-language services in every designated area. Requiring

clinics to apply for designation is just one possible method of meeting this objective.

At the present time three clinics have been so designated and a fourth has applied for designation. In addition, a number of clinics located in communities with a significant francophone population have voluntarily taken initiatives to provide services in French, but have not sought formal designation.

I hope that answers your question, Mr Kormos. It seems it was somewhat more complex than I perceived.

**Mr Kormos:** I want to thank you for that response and particularly Ms Austin, who I'm sure assisted in the preparation of that and who has made herself available throughout the whole course of this process to all members for responses to queries and other assistance. I want to thank her particularly.

**The Chair:** Further discussion? Shall section 12 of the bill carry? All those in favour? All those opposed? I declare section 12 carried.

Section 13 of the bill: committee motion 29.

1540

**Ms Castrilli:** I believe, given previous motions that were defeated, this is probably out of order and I withdraw it.

**The Chair:** Committee motion 30, with explanation, please.

**Mr Kormos:** I move that subsection 13(3) of the bill be amended by adding "or" at the end of clause (c), by striking out "or" at the end of clause (d) and by striking out clause (e).

This again is consistent with our previous motions to this committee in that it broadens the scope of services to be provided by legal aid services. This is a section of prohibition which penalizes impecunious persons who would be denied access to the justice system obviously in all three cases; it would appear at least the civil justice system. Perhaps not necessarily; so it's not restricted to — this doesn't impair the corporation's ability to, let's say, restrict the number of certificates or to indicate the nature of the actions or to set the eligibility standards, but simply avoids the prohibitions declared in subsection (3).

I note that the Liberal caucus has an identical amendment that they would have presented in any case.

**Ms Castrilli:** I concur with what Mr Kormos said. We have an identical amendment which I hope will carry.

**The Chair:** Further discussion? Seeing none, I shall put the question.

**Mr Kormos:** A recorded vote, please.

**Ayes**

Castrilli, Kormos.

**Nays**

Martiniuk, O'Toole, Rollins, Stewart.

**The Chair:** I declare the motion defeated. I believe committee motion 31 is identical, so it is withdrawn?

**Ms Castrilli:** Yes, I withdraw it, with regret.

**The Chair:** Shall section 13 of the bill carry? All those in favour? All those opposed? Section 13 is carried.

Section 14: committee motion 32, with explanation, please.

**Mr Martiniuk:** I move that clause 14(1)(b) of the bill be amended by adding "other than legal services" after "legal aid services" in the third line.

This is an amendment which deals with the power to issue certificates to service providers. The amendment limits the types of certificate which we may be issued to service providers. The amendment provides that while service providers may receive certificates, they will not be permitted to receive a certificate for legal services as opposed to non-legal services.

**The Chair:** Further discussion? Mr Kormos? No?

**Mr Kormos:** Just a quizzical look.

**The Chair:** Seeing no further discussion, I shall put the question. Shall committee motion 32 carry? All those in favour? All those opposed? I declare committee motion 32 carried.

Committee motion 33, with explanation, please.

**Mr Martiniuk:** This is an amendment to subsection 14(4) of the bill.

I move that subsection 14(4) of the bill be struck out and the following substituted:

"Legal services must be provided by lawyers

"(4) Legal services shall only be provided by a lawyer or a person working under the direct supervision of a lawyer."

This is merely a continuation of the clarification of paralegal or the lack of paralegal application for certificates under the bill.

**Ms Castrilli:** I don't disagree with the intent of the motion. I just wonder if what you mean is legal aid services as opposed to legal services. The definition section, section 1, speaks to legal aid services and I'm assuming that we're talking about legal services under the act, which are legal aid services. I just seek clarification as to how you interpret this section. I say that because the previous section talks about legal aid services other than legal services. I just want to make sure exactly what you mean.

**Mr Kormos:** Before the PA responds, this came up yesterday: a distinction between legal services and legal aid services. I recall that yesterday when I raised the same question Ms Austin looked at me as if I was asking the stupidest question conceivable. I acknowledge the response was that it must have been. Perhaps we can get into why the government is making the distinction between legal aid services and legal services in —

**Mr Martiniuk:** Excellent question, both of you. There are certain non-legal services that will be covered, ie, dispute resolution or mediation. That is a non-legal service that is a legal aid service and therefore we want to make the distinction, and therefore I believe this suggested amendment is proper.

**Ms Castrilli:** Let me just ask a further question. Under the act, as amended, legal services can also be provided by mediators, correct?

**Mr Martiniuk:** No, legal aid services can be provided.

**Ms Castrilli:** Legal aid services could also be provided by mediators. I guess I'm wondering how that relates to this section, because legal services could also be provided by mediators, could they not?

**Mr Martiniuk:** No.

**Ms Castrilli:** So you're excluding mediators from legal services and only including them under legal aid, which to me seems odd. I would think it would be the other way around. I would understand legal aid services to be applicable to lawyers only, but legal services might probably include mediators. I'm really only seeking clarification. I thought I was clear until I saw your last amendment.

**Mr Martiniuk:** OK. I don't want to spend a lot of time on it but I always thought mediators might give legal advice too. That is not the role of a mediator. A mediator is there to resolve a problem and not to provide legal advice to either party. So it's quite possible for a mediator to carry on his or her duties without giving any legal advice and, if a legal point comes up, saying, "You have to consult your lawyer." Their duty is to seek a resolution to the problem notwithstanding the legal rights of either party, which is something that I learned in discussing the matter with lawyers and paralegals, and the distinction from legal services, where a person would give legal advice. But a mediator shouldn't do that; that is not the role of the mediator.

**Ms Castrilli:** Except for the Legal Aid Act, I think of legal services as quite different, I suppose. To be clear, a mediator would be able to get a certificate and provide legal aid services but could not perform legal services. Is that right?

**Mr Martiniuk:** That's correct.

**Ms Castrilli:** That's what you're saying?

**Mr Martiniuk:** That's what we're trying to do.

**Ms Castrilli:** OK.

**Mr Kormos:** If I could just have the PA get on the record and let me know, the government is responding to the objection that we heard about paralegals, as they are now unregulated, providing legal services on a certificate basis. Am I clear that the government's amendments here are to exclude current paralegals, who cover the gamut of A to Z and very good to very bad; it's prohibiting them from providing legal aid services?

**Mr Martiniuk:** Free-standing; ones who are not employed by a lawyer. That is our intent. It has always been the intent of this act; we're just trying to clarify it.

**The Chair:** Further discussion? Seeing none, I'll put the question on committee motion 33. All those in favour? All those opposed? I declare the motion carried.

Committee motion 34, with explanation, please.

**Ms Castrilli:** In the light of the discussion we've just had, I withdraw this.

**Mr Kormos:** Motion 35, in view of motion 33, withdrawn too.

1550

**The Chair:** Motion 35 is withdrawn. Committee motion 36.



**Ms Castrilli:** I move that section 14 of the bill be amended by adding the following subsection:

"Aboriginal legal services corporations

"(5) In deciding whether to provide funding to an aboriginal legal services corporation, the corporation shall not consider the comparative costs, effectiveness or efficiency of clinics or other organizations that do not provide legal aid services in the area of aboriginal law."

This was brought to our attention by the aboriginal clinic that came before us. They're concerned about how other clinics might be set up and that the measures that would be used would be inappropriate, given the nature of aboriginal law.

**The Chair:** Further discussion? Seeing none, all those in favour of committee motion 36? All those opposed? I declare the motion defeated.

Shall section 14, as amended, carry? All those in favour? All those opposed? I declare section 14, as amended, carried.

Section 15, committee motion 37.

**Ms Castrilli:** I move that section 15 of the bill be amended by adding the following subsection:

"Limitation

"(4) The corporation shall not merge two or more areas into one area under subsection (3) unless as a result,

"(a) there will be no reduction in the quality of legal aid services provided; and

"(b) there will be significant cost savings to the corporation."

This was a recommendation of the area directors who were very concerned that there might be a merger of areas that would not benefit the individuals who required service in those particular areas. They want to ensure that the quality of service to individuals needing legal aid remained high despite any merger. They weren't against mergers but they wanted to make sure that the quality of the services provided was very high.

**Mr Kormos:** I understand the intent of the amendment. When it comes to the quality of legal aid services, I want to reiterate the problem that I foresee down in Niagara region. I'm not prepared to say that the merger of Niagara North and Niagara South is going to reduce the quality of services. It may well, but I'm not prepared to presume it. But it will reduce access to legal aid. I think we can all agree that that's encompassed in the quality of services.

I'd caution the government. I think it's pretty clear what they've got in mind. It's pretty clear that they anticipate merging regions, especially when you go on to look at the powers and restrictions on a legal aid director and the clear bias in favour of full-time legal aid directors in contrast to part-time directors. I'm just saying that's going to reduce access.

That again will be part of this government's and any subsequent government's toolbox, because what it means is that fewer people will be able to access legal aid. Fewer applications will be made and you can defund it then because there won't be that many applications before it. You'll simply be denying people access to it.

**Mr Martiniuk:** Just a point of clarification. Mr Kormos spoke yesterday regarding a possible bias for part-time legal aid directors, and I understand that. There is an upcoming motion of the government which would permit part-time legal aid directors to take private clients without the consent of the corporation, which I think might alter your viewpoint slightly. It will permit part-time legal aid directors to carry on a private practice without permission from the corporation. I think it even goes further. I believe it permits him or her to take legal aid matters with the consent of the corporation.

**Mr Kormos:** Now you've gone too far.

**Mr Martiniuk:** That may be. We'll get into that, but we cannot support this. Again I think the flexibility is taken from the corporation, and I'll be voting against the amendment.

**Ms Castrilli:** I can't imagine you'd be voting against quality of service, but you're the parliamentary assistant.

**The Chair:** Further discussion? Seeing none, I shall call the question on committee motion 37. All those in favour? All those opposed? I declare the motion defeated.

Shall section 15 of the bill carry? All those in favour? All those opposed? I declare section 15 of the bill carried.

Section 16, committee motion 38.

**Ms Castrilli:** I move that subsection 16(1) of the bill be amended by adding "and" at the end of clause (c) and by striking out clause (d).

It seems to me this is a pretty fundamental motion here and I can't imagine you wouldn't endorse it. What it actually says is that when people apply for legal aid, they will not be required to, as the bill currently requires them to do, pay an application fee. We're talking about individuals who come to the justice system with little or no funds and we're asking them in this bill to pay an application fee. That's a barrier to justice; it's a barrier to equality; it's a barrier to access.

I don't think it's at all supportable. That's something that has been told us as well in this committee. I hope the government will reconsider that this provision for an application fee applies not only here but in other sections of the bill. It's really not defensible in the circumstances.

**Mr Kormos:** Obviously I support the amendment, especially in view of motion 39. The reason people go to legal aid is because they don't have any money, because they're broke. My concern is that maybe there are people on this committee who don't understand what it means to literally not even have that — I don't know what is anticipated — 20 bucks, 10 bucks or five bucks in your pocket. There are people out there for whom five bucks — the reality is that all the people here are elected members. Unfortunately, the staff here don't make salaries that are appropriate to the kind of work they do, but the elected members make significant incomes. It would be the rare elected member who couldn't reach into his or her pocket and pull out five, 10, 20 bucks at the drop of a hat or go to a bank machine and access it. But the fact is that a whole lot of people don't make the kinds of incomes that MPPs make and, once again, that's why they're applying to legal aid.

You can exploit the anathema that there is for, let's say, criminal legal aid coverage, although you've heard a lot of comments about how exploiting that anathema for criminal legal aid coverage is a denial of the presumption of innocence. But you're talking here about a single mother not being able to get, I don't know, I suppose a support order that will enable her to keep her kids fed and clothed in a modest way. Yes, there are a whole lot of single mothers out there and, if you asked them to open their wallet right now, there wouldn't even be five bucks in it.

At the end of the day, what's the motive here? Is the motive to actually constitute a copayment? If that's the motive, that's covered elsewhere in the act, where the corporation has the power to charge back to a person for the amount of legal aid rendered, and that's the case now; or to require a person to pay a portion of the legal aid tab that's surrendered by a lawyer. If that's the motive, it's already covered.

If it's to control access and again to control the number of people who apply, look whom it's controlling. It's controlling the very poorest people from access rather than the ones who might fall into the grey area. It's inhibiting the wrong people. Do you hear what I'm saying? It's inhibiting the wrong people from applying for legal aid. It just doesn't jibe.

1600

I would ask the PA for an explanation or a justification, the rationale for the consideration of an application fee to make a legal aid application. The only conclusion I can reach is, that means when you go into the office where legal aid applications are taken, you can't even get a form to fill out until you put your cash on the dash. It's a Jim Brown expression that I've picked up.

**Interjection:** Jim who?

**Mr Kormos:** A colleague of ours — that until you lay your cash on the dash, you can't fill out the form; or if you can't fill it out, nobody is going to bother looking at it or assessing it. That's the only interpretation one can have of an application fee, because copayment is already covered and it's already in effect with the legal aid system, and reimbursement is already covered, so it can't mean either of those two things. What exactly would the government have in mind by even contemplating an application fee when you would be excluding the most eligible people — if you want to put it in degrees on a scale from 0 to 100 — when you'd be excluding the most eligible, not the ones who are maybe iffy? Let me put it this way: You might want to discourage people who have sufficient incomes to retain their own lawyer. Look at this. Maybe you should be trying to address the people who are making — what do you say? — “frivolous” applications for legal aid. In other words, if I go to a legal aid office and I make the same amount of money — well, there are a few of us who make the lowest incomes here at Queen's Park. I don't get the perks of most members. If I go and use up X amount of time in a legal aid office, with my income I can't dispute the fact that maybe I should be compelled to pay, because it's absurd that I should be applying for a legal aid certificate with my income, or any of us with our incomes.

Maybe there should be a way to charge me back for the hour and a half of time that it takes to take an application and do an assessment, however wacko that idea sounds, because how would you ever do it?

That's the sort of person, if you want to create a disincentive, because it uses up valuable staff time, who you want to discourage. This doesn't achieve that goal. If it takes five bucks, 20 bucks when you make 78 grand a year — that's minimum wage of MPPs, \$78,006 — to come up with five, 10, 20 bucks is not a hardship. But if you're a poor single mother, if you're any number of persons who find themselves in a position to apply for legal aid for any number of reasons, even \$5, \$10, \$20 — or \$20, \$10, \$5; let's go in descending order — could be a considerable hardship, one that you simply can't meet. There's got to be a rationale for this, please.

**Mr Martiniuk:** We've been discussing throughout this bill the desire of the government to provide to this corporation all possible tools. If the question to me is, do I advocate application fees, the answer personally is, “Absolutely not under the present circumstances as I see the system working.” However, I could not give you the same answer five or 10 years from now. The corporation in its wisdom may feel, in some certain circumstance in the future, that this is a requirement. We are providing the tools. The idea is to make this corporation flexible rather than fettering it. We've had this discussion before and that is the intent. It is not mandatory. It is merely a tool that the corporation may choose to use or may choose not to use.

**Ms Castrilli:** I was going to let my comments stand until the parliamentary assistant had spoken. I appreciate what he's saying and I agree with what he's saying: that you want to give flexibility to the corporation. Let me ask you then, if your objective is to give that kind of flexibility, why you would not make this section permissive? It is not permissive. It says:

“An individual is eligible to receive legal aid services, by the method that the corporation considers appropriate, having regard to its policies and priorities established under section 12, if...he or she pays the application fee.”

This is the problem, because it's not to say “may,” and I understand that it says “if any” afterwards, but it's a pretty clear direction that you'll want an application fee and it's only in exceptional circumstances that you're not going to have an application fee. If that's not the case, I'd like you to say it on the record. It'll be small comfort to people who will have to pay an application fee, but the way this is written, you're sending a very clear signal that you want to make legal aid less and less accessible to people who need it.

**The Chair:** Further discussion? Seeing none, shall committee motion 38 carry?

**Mr Kormos:** Recorded vote, please.

**Ayes**

Castrilli, Kormos.

**Nays**

Martiniuk, Rollins, Stewart, Bob Wood.



**The Chair:** I declare the motion defeated.

**Mr Kormos:** Chair, motion 39, identical to motion 38, is withdrawn.

**The Chair:** It's very close. Thank you, Mr Kormos. Shall section 16 of the bill carry?

### Ayes

Martiniuk, Rollins, Stewart, Bob Wood.

### Nays

Castrilli, Kormos.

**The Chair:** I declare section 16 of the bill carried. Section 17: committee motion 40.

**Mr Martiniuk:** Chair, it would seem that both the government and the opposition had the same excellent thoughts and I would ask, as a matter of procedure, that we proceed with Liberal motion 41, and after that has passed, if it is passed, I will withdraw 40.

**The Chair:** I can only do that with the consent of all parties.

**Ms Castrilli:** We consent.

**The Chair:** OK.

**Ms Castrilli:** Thank you.

I move that subsection 17(3) of the bill be amended by striking out "such other information as the corporation may request in order to assess" in the fifth and sixth lines and substituting "such other information as is necessary for the corporation to assess."

As Mr Martiniuk has pointed out, the government obviously concurs. What we've heard here is that it's important that the corporation certainly require information, but it's only information that's necessary to the particular case and not every information that will be under the scrutiny of the corporation.

**The Chair:** Further discussion? Seeing none, I shall put the question.

**Mr R. Gary Stewart (Peterborough):** Recorded vote, please.

### Ayes

Castrilli, Kormos, Martiniuk, Rollins, Stewart, Bob Wood.

**The Chair:** I declare committee motion 41 carried.

**Mr Martiniuk:** Committee motion 40 is withdrawn.

**The Chair:** Withdrawn.

Shall section 17, as amended, carry? All those in favour? All those opposed? I declare section 17, as amended, carried.

Section 18: committee motion 42.

**Mr Martiniuk:** I move that subsection 18(2) of the bill be amended by adding "and only to the extent that the claim is covered by any insurance held by the law society" at the end.

**Mr Kormos:** I trust that this is companion to motion 43, in which the law society apparently got really worked

up over the wording of parts of section 18. I trust that this is a response to them getting themselves into a little bit of a lather.

**Mr Martiniuk:** I'm not aware of that, but obviously the object is that the new corporation would accept the liabilities of the plan except those covered by any insurance policy carried by the law society, and that would seem fair. Was there a problem? I was not aware of a problem.

**Mr Kormos:** Weren't there submissions made with respect to this? Was this part of the law society's?

**Mr Martiniuk:** No.

**Mr Kormos:** There were no submissions made to it, so it wasn't drawn to the government's attention during the course of the committee hearings. It was just novel for the government to have unilaterally embarked on this amendment.

**Mr Martiniuk:** There are a number of technical amendments that will clarify the act after.

**Mr Kormos:** Don't you read these things before they get first reading?

**Mr Martiniuk:** We certainly do, Mr Kormos.

**Ms Castrilli:** I don't know where this came from, as Mr Kormos has said, but it makes eminent sense and I'm glad to see it included in this bill.

**The Chair:** Further discussion? Seeing none, I shall call the question on committee motion 42. All those in favour? All those opposed? I declare committee motion 42 carried.

Committee motion 43, with an explanation, please.

**Mr Martiniuk:** I move that section 18 of the bill be amended by adding the following subsection:

"Corporation's liability for claims other than professional accounts

"(5.1) The corporation is liable in respect of claims in relation to the legal aid plan or the legal aid fund, or to any other matter chargeable to the legal aid fund, arising before this part comes into force, only to the extent that the claim is not covered by any insurance held by the law society."

This is a companion of the matter just passed and deals with the liability of the corporation for claims relating to the time period that the legal aid plan was being administered by the law society.

1610

**The Chair:** Further discussion? Seeing none, I shall call the question on committee motion 43. All those in favour? All those opposed? I declare committee motion 43 carried.

Shall section 18, as amended, carry?

**Mr Martiniuk:** I'm sorry. There's a 44.

**The Chair:** It's a new section.

**Mr Martiniuk:** You're quite right, Mr Chair, sorry.

**The Chair:** Thank you.

**Ms Castrilli:** I want to go on record as thanking the parliamentary assistant for making sure that our Liberal motions don't get ignored.

**The Chair:** Shall section 18 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 18, as amended, carried.

New section: 18.1, committee motion 44, with explanation, please.

**Ms Castrilli:** Sections 18.1 and 18.2 are together. Do you want to deal with them together or separately?

**The Chair:** So we shall, together, please.

**Ms Castrilli:** I move that the bill be amended by adding the following sections:

"Complaints process

"18.1(1) The corporation shall establish a process for the prompt investigation and resolution of complaints about the legal aid services provided to applicants and about the amounts persons may be required to contribute to the corporation towards the costs of any legal aid services provided by the corporation.

"Ombudsman

"(2) The corporation may appoint an independent ombudsman to review the complaints.

"Appeals

"18.2(1) A person may appeal to the Divisional Court the corporation's refusal to provide him or her with legal aid services.

"Same

"(2) An applicant may appeal to the Divisional Court the amount that the corporation requires the person to contribute towards the costs of legal aid services provided by the corporation."

The reason this motion is being advanced is because there is a real concern as to what happens when one is denied. We've got a situation here in Ontario where the number of legal aid certificates has decreased dramatically even though there has been a surplus in the legal aid plan. People have been asking us why that is, why they can't get representation in family court, in environmental law, in aboriginal cases, and this is simply a procedure of fairness, natural justice, if you will. It provides a mechanism to allow people to have their case reviewed and dealt with in a fair manner.

**Mr Kormos:** The complaints process is important. I think it's in the interests of the corporation as well to be required to establish that process, because that will remind it to ensure that there are fewer complaints than there would be otherwise. Quite frankly, the Divisional Court access may well be merely codifying what already exists. I suppose there are avenues of judicial review that could be undertaken. Yes, of course, there would be; the extraordinary remedies that are often sought. You would still have court access. This codifies it to the Divisional Court, which I think is in everybody's interest. I couldn't for the life of me think of government members not supporting this.

**Mr Martiniuk:** The concern is, of course, that the proposed amendment would add a legislative complaints process and introduce the Divisional Court upon Legal Aid Ontario refusal. I must say the government is opposed to this proposal. Under the bill as it stands, Legal Aid Ontario would have authority to set the policy for com-

plaints, and, more important, there is a quality assurance program in sections 59 and 91, which hopefully will ensure the best quality legal aid service to the public.

I don't think we want to complicate it by (1) setting up a bureaucracy, which an Ombudsman would be, and (2) introducing the courts into the process. We all know the length of time it takes for the courts to deal with matters on occasion, and this might even be a right without a remedy. We definitely are against the proposed amendment.

**Mr Kormos:** The quality assurance that's referred to deals with the services provided; that is to say, the legal aid services provided. Does it deal with the arbitrary denial, for instance, of those services? I think the PA is grasping there, number one.

Number two, to suggest that somehow Ms Castrilli is introducing the Divisional Court similarly is out of line, because all she is talking about is codifying what is probably there already, and that is, the right to seek extraordinary remedies. That's a long-time right, and you probably go to Divisional Court to do that. I think lawyers would tell you that.

**Ms Castrilli:** I believe that to be the case. I don't think we're introducing a new element at all. I think anyone who is refused could in fact apply. What we're trying to do is simplify, actually, the complaints process so that you don't have to take those extraordinary measures. Sometimes people who have no money can't insist on their rights.

What I worry about and what I've seen happen in the last while is that simple tribunals where people can go to have matters resolved have been eliminated right, left and centre, so there are very few avenues for people to insist on their rights outside of the courts. The courts always exist there as a last resort.

If you look at what has happened, for instance, with police, the police complaints tribunal has been eliminated. So now if you have a complaint that isn't dealt with by the police, you have to go to court. The powers of the Ombudsman have been reduced so that she can take very few cases and your only option is to go to court. The Ontario Human Rights Commission has had its budget cut quite dramatically, and so if you can't get justice there, you have to go to court.

Ordinary people can't afford to go to court all the time. You've got to have some quick and easy complaints procedures to allow them to deal with their particular grievance. That's all we're trying to do here. We've heard the complaint that there are some real deficiencies with respect to how legal aid certificates are given out, and this is a quick and easy way to deal with them and give credibility to the corporation.

**The Chair:** Further discussion? Seeing none, I shall call the question on committee motion 44.

**Mr Kormos:** Recorded vote.

**Ayes**

Castrilli, Kormos.



## Nays

Martiniuk, Rollins, Stewart, Bob Wood.

**The Chair:** I declare committee motion 44 defeated.

Section 19: Discussion on section 19? Seeing no discussion, shall section 19 of the bill carry? All those in favour? All those opposed? I declare section 19 of the bill carried.

Section 20: committee motion 45, with explanation, please.

**Ms Castrilli:** I move that subsection 20(2) of the bill be amended by inserting "and meet such service standards" after "functions." Just to make this a little clearer, the subsection would read, "A lawyer who acts as duty counsel shall perform such functions and meet such service standards as may be prescribed."

This is to give the corporation additional flexibility to set some standards of service. I know the government is interested in that, because it has dealt with some of that in other parts of the act, so I don't see any difficulty in clarifying that lawyers should meet such service standards as the corporation may prescribe under this section.

1620

**The Chair:** Further discussion? Seeing none, I shall put the question on committee motion 45. All those in favour? All those opposed? I declare committee motion 45 defeated.

Shall section 20 of the bill carry? All those in favour? All those opposed? I declare section 20 of the bill carried.

Section 21 of the bill: Discussion? Seeing no discussion, I shall put the question. Shall section 21 carry? All those in favour? All those opposed? I declare section 21 carried.

Section 22: committee motion 46, with discussion, please.

**Mr Martiniuk:** I move that subsection 22(6) of the bill be amended by striking out "person" in the second line and substituting "applicant."

This amendment applies to, as we discussed, the type of legal services which area directors may perform.

**Mr Kormos:** The problem is that it doesn't; it doesn't solve or address the issue in the way that Mr Martiniuk would have us believe. Let me point out what it does. It changes the word "person" to "applicant." When we refer to the definition, "'applicant' means a person who applies for or receives legal aid services." The proper amendment should have read, "An area director shall not render legal aid services," because an applicant is a person who has applied for or receives a legal aid certificate. That means that if I have applied for a legal aid certificate to defend myself on a charge of theft, I cannot go to the area director to prepare my will, because it doesn't say "legal aid services," it says "legal services," and "legal services" wasn't defined in the original bill and remains generic; legal services are everything from soup to nuts to preparing a will to what have you.

I understand what the government is trying to do here; I think I understand what they're trying to do. I don't think

they achieve it. I think the far better amendment would have been to simply say "legal aid services," which is defined in the definition, because it goes beyond mere legal services. Do you see what I'm saying, Chair? It includes those mediation services, for instance. The Chair understands. I wish Mr Martiniuk would be as understanding.

**Mr Martiniuk:** I'm very understanding.

**Mr Kormos:** Look, I think we have a problem here, and I'm pleased to accommodate. I'll do anything I have to to accommodate the government, even to giving unanimous consent for a reworded amendment, because I really think that what should be done here is to amend it to read "legal aid services" and keep in the word "person." Otherwise, you create some problems there.

**Ms Castrilli:** If I may, Chair, we came to the same conclusion. That's why we introduced motion 47, which does just that. It talks about legal aid services and doesn't get us into the argument of applicant or person. I suggest to you that might be a better amendment. I think it achieves the same thing; at least, it achieves the intent you want to achieve, and it's a far clearer amendment.

**Mr Martiniuk:** I'm sorry, I really cannot agree. I don't see your point. By changing it to any applicant, it means an area director is now free to service non-applicants; in other words, carry on a private practice. If there is at any time any reason to provide legal services to an applicant, that would require the permission of the board. I think it's a neat solution, and I think it does work, Mr Kormos.

**The Chair:** Further discussion?

**Mr Kormos:** Of course there is. Let me clarify this, let me assist. This prohibits a legal aid director from even doing pro bono work for a person who is in the status of being an applicant, who is in the status of either applying for legal aid or in possession of a legal aid certificate. It prohibits the legal aid director from doing freebies, in whatever area — I don't know, the sky's the limit; the imagination is the only limit here — for an applicant with respect to anything, and "applicant" is clearly defined; it's a person who has applied for or is in receipt of — I use the word "certificate" because it's probably the more usual circumstance.

Ms Castrilli's amendment is far more dead on. Please, the parliamentary assistant should swallow his pride and acknowledge that the amendment of the Liberal Party is what he and the government want to do, because you've got "person" replaced by "applicant," and you've got "render legal services." "Legal services" is broad-ranging, and "rendering" means precisely that, rendering, not even charging necessarily. That means a legal aid director is prohibited from doing a freebie. By all means, I don't want to prohibit lawyers from doing freebies; I encourage it, especially lawyers who receive salaries as MPPs.

**Ms Castrilli:** We've had a confusion throughout between legal services and legal aid services. I think the parliamentary assistant did an excellent job today of clarifying the differences and dispelling that confusion. To

go with this amendment, to me, brings us right back into the confusion that we had at the beginning. It would seem to me that to get out of that quagmire, you should look at 47 as opposed to 46. You don't want a situation where an area director can't perform legal services. You do want them to perform certain types of services that don't conflict with their obligations under the act. Otherwise, you're going to find it very difficult to get area directors, because they're going to think twice about whether some other aspect of practice will not be allowed to continue.

I think we're trying to achieve the same thing. Maybe legislative counsel will help us here. I just don't think your amendment does what you want it to do. I think it puts us right back into the confusion we were in before.

**Mr Kormos:** We've got a whole bunch of motions. We're running up against a time limitation here. I believe we have to start doing clause-by-clause at 4:30. I am prepared to set 46 and 47 aside. I cannot state emphatically enough how I think there's a distinction between the two that makes 47 clearly preferable. You heard from area directors who said that it is desirable that an area director, especially a part-time one, be engaged in the practice of law. That was a specific thing they pointed out. They said it was a plus, it brought something to the job.

I'm prepared to do whatever has to be done by way of unanimous consent to set this motion aside and deal with it at any point, at any time, before 4:30, after 4:30, after 6:30 tomorrow, the day after, to make sure that the intent is genuinely reflected. With great sincerity and great emphasis, we've gone through the arguments. I think the arguments are clear, and 47 does what we believe the government wants to do, as compared to 46, which creates problems.

**The Chair:** Further discussion? Seeing none, I shall put the question on committee motion 46.

**Ms Castrilli:** Hold on. If I'm not mistaken, you asked for unanimous consent to put this aside, did you not? I just want to be clear on what we discussed.

**The Chair:** I should make a clarification. We have to follow the closure motion on this, and there is no allowance for such. At 4:30 by my clock, which is in about a minute and a half —

**Mr Kormos:** OK, let's do her, Chair. Let her rip. You screw this one up, though, it could have repercussions.

**The Chair:** OK. Further discussion on committee motion 46?

**Mr Kormos:** Recorded vote, please.

#### Ayes

Martiniuk, Rollins, Stewart, Bob Wood.

#### Nays

Castrilli, Crozier, Kormos.

**The Chair:** I declare the motion carried.

**Ms Castrilli:** I can see a bill to change this later on, can't you?

1630

**The Chair:** Committee motion 47: With explanation, please, Ms Castrilli.

**Ms Castrilli:** I move that subsection 22(6) of the bill be amended by striking out "legal services" in the first and second lines and substituting "legal aid services."

I think we've had ample discussion with respect to that. I thought we had very clear lines drawn on what were legal services and what were legal aid services. I think we need to say that these are legal aid services. Otherwise, you will find yourself in quite some difficulty later on.

1630

**The Chair:** Seeing as it's 4:30 of the clock —

**Mr Kormos:** Recorded vote, please.

#### Ayes

Castrilli, Crozier, Kormos.

#### Nays

Martiniuk, Rollins, Stewart, Bob Wood.

**The Chair:** I declare the motion defeated.

Being as we are past 4:30 of the clock, we shall move into the voting on clause-by-clause sections.

Shall section 22 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 22 of the bill carried.

Section 23, clause 23(1)(b) of the bill, committee motion 48, government motion: All those in favour? All those opposed? I declare committee motion 48 carried.

Committee motion 49, a Liberal motion, subsection 23(3) of the bill: All those in favour? All those opposed? I declare committee motion 49 defeated.

Shall section 23 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 23 of the bill carried.

Shall sections 24, 25, 26 and 27 of the bill carry? All those in favour? All those opposed? I declare sections 24, 25, 26 and 27 of the bill carried.

Section 28, committee motion 50, Liberal motion, subsection 28(4.1) of the bill: Shall committee motion 50 carry? All those in favour? All those opposed? I declare committee motion 50 defeated.

Shall section 28 of the bill carry? All those in favour? All those opposed? I declare section 28 of the bill carried.

Section 29: Shall section 29 of the bill carry? All those in favour? All those opposed? I declare section 29 of the bill carried.

Section 30, committee motion 51, subsection 30(2) of the bill, a Liberal motion: Shall committee motion 51 carry? All those in favour? All those opposed? I declare committee motion 51 defeated.

Committee motion 52, subsection 30(3) of the bill, a government motion: Shall committee motion 52 carry? All those in favour? All those opposed? I declare committee motion 52 carried.



Committee motion 53, subsection 30(3) of the bill, a Liberal motion: Shall committee motion 53 carry? All those in favour? All those opposed? I declare committee motion 53 defeated.

Shall section 30 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 30 of the bill carried.

Section 31: Shall section 31 of the bill carry? All those in favour? All those opposed? I declare section 31 of the bill carried.

Shall sections 32, 33 and 34 of the bill carry? All those in favour? All those opposed? I declare sections 32, 33 and 34 carried.

Section 35, committee motion 54, subsection 35(6), a government motion: Shall committee motion 54 carry? All those in favour? All those opposed? I declare committee motion 54 carried.

Shall section 35 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 35 of the bill, as amended, carried.

Section 36, committee motion 55, subsection 36(3) of the bill, a government motion: Shall committee motion 55 carry? All those in favour? All those opposed? I declare committee motion 55 carried.

Shall section 36 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 36 of the bill, as amended, carried.

Section 37, committee motion 56: Shall subsection 37(3) of the bill, a government motion, carry? All those in favour? All those opposed? I declare committee motion 56 carried.

**Mr Kormos:** Chair, that's a pretty long quorum bell, ding-dong.

**The Chair:** Are you calling for a recess?

**Mr Rollins:** I call a five-minute recess.

**The Chair:** Should I call a five-minute recess?

**Mr Kormos:** No, Chair, you have no authority to do that. We're under time allocation.

**Mr Rollins:** I'll just call a recess.

**Mr Kormos:** Not under time allocation and the questions are deemed to have been put.

*Interjections.*

**The Chair:** We're checking into that matter at this very moment.

Committee motion 57, subsection 37(4) of the bill, a government motion: Shall committee motion 57 carry? All those in favour? All those opposed? I declare committee motion 57 carried.

Shall section 37 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 37 carried.

Section 38, committee motion 58, subsection 38(2) of the bill, a government motion: Shall committee motion 58 carry? All those in favour? All those opposed? I declare committee motion 58 carried.

Committee motion 59, subsections 38(2), 38(3) and 38(4) of the bill, a Liberal motion: Shall committee motion 59 carry? All those in favour? All those opposed? I declare committee motion 59 defeated.

Shall section 38 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 38 of the bill, as amended, carried.

Section 39, committee motion 60, subsection 39(1.1) of the bill, a government motion: Shall committee motion 60 carry? All those in favour? All those opposed? I declare committee motion 60 carried.

Committee motion 61, subsection 39(1.1) of the bill, a Liberal motion: Shall committee motion 61 carry? All those in favour? All those opposed? I declare committee motion 61 defeated.

Committee motion 62.

**Mr Kormos:** Out of order, Chair.

1640

**The Chair:** Withdrawn?

**Mr Kormos:** It's out of order, because it's been voted on in 61.

**The Chair:** Out of order.

Committee motion 63, subsections 39(3.1) and (3.2) of the bill, a Liberal motion: Shall committee motion 63 carry? All those in favour? All those opposed? I declare committee motion 63 defeated.

Shall section 39, as amended, carry? All those in favour? All those opposed? I declare section 39 of the bill carried.

Shall section 40 of the bill carry? All those in favour? All those opposed? I declare section 40 of the bill carried.

Section 41, committee motion 64, subsection 41(1) of the bill, government motion: Shall committee motion 64 carry? All those in favour? All those opposed? I declare committee motion 64 carried.

**Ms Castrilli:** Number 65 is out of order. It's identical to the government motion.

**The Chair:** Number 65 has been withdrawn, out of order.

**Ms Castrilli:** I thank the government for taking our thoughts on this.

**The Chair:** Committee motion 66, subsection 41(2) of the bill, government motion: Shall committee motion 66 carry? All those in favour? All those opposed? I declare committee motion 66 carried.

**Ms Castrilli:** Number 67, Chair, is also out of order. It's identical to the government motion and I thank them for their foresight in concurring with us.

**The Chair:** Committee motion 67 has been withdrawn.

Shall section 41, as amended, carry? All those in favour? All those opposed? I declare section 41 of the bill, as amended, carried.

Shall section 42 of the bill carry? All those in favour? All those opposed? I declare section 42 of the bill carried.

Section 43, committee motion 68, subsection 43(2) of the bill, Liberal motion: Shall committee motion 68 carry? All those in favour? All those opposed? I declare committee motion 68 defeated.

Committee motion 69, subsection 43(2.1) of the bill, Liberal motion: Shall committee motion 69 carry? All those in favour? All those opposed? I declare committee motion 69 defeated.

Shall section 43 of the bill carry? All those in favour? All those opposed? I declare section 43 of the bill carried.

Shall sections 44 and 45 of the bill carry? All those in favour? All those opposed? I declare sections 44 and 45 of the bill carried.

Section 46, committee motion 70, subsection 46(4) of the bill, government motion: Shall committee motion 70 carry? All those in favour? All those opposed? I declare committee motion 70 carried.

Shall section 46, as amended, carry?

**Mr Kormos:** One moment. A recorded vote.

**The Chair:** A deferred vote.

**Mr Kormos:** Recorded.

**The Chair:** Yes, it's deferred.

Section 47, committee motion 71, subsection 47(1) of the bill, government motion: Shall committee motion 71 carry? All those in favour? All those opposed? I declare committee motion 71 carried.

Committee motion 72, subsection 47(2) of the bill, government motion: Shall committee motion 72 carry? All those in favour? All those opposed? I declare committee motion 72 carried.

Committee motion 73, subsection 47(5) of the bill, government motion: Shall committee motion 73 carry? All those in favour? All those opposed? I declare committee motion 73 carried.

Shall section 47 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 47, as amended, carried.

Section 48, committee motion 74, subsections 48(3) and (4) of the bill, government motion: Shall committee motion 74 carry? All those in favour? All those opposed? I declare committee motion 74 carried.

Shall section 48 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 48, as amended, carried.

New section, committee motion 75, section 48.1 of the bill, government motion: Shall committee motion 75 carry? All those in favour? All those opposed? I declare committee motion 75 carried.

Committee motion 76, section 48.1 of the bill, Liberal motion: All those in favour? All those opposed? I declare committee motion 76 defeated.

Shall sections 49, 50 and 51 of the bill carry? All those in favour? All those opposed? I declare sections 49, 50 and 51 of the bill carried.

Section 52, committee motion 77, section 52 of the bill, a government motion: Shall committee motion 77 carry? All those in favour? All those opposed? I declare committee motion 77 of the bill carried.

Shall section 52 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 52, as amended, carried.

Shall sections 53, 54 —

**Mr Kormos:** Chair, can we do these section by section, please?

**The Chair:** Yes.

Shall section 53 of the bill carry? All those in favour? All those opposed? I declare section 53 of the bill carried.

Section 54: Shall section 54 —

**Mr Kormos:** A recorded vote, please.

**The Chair:** A recorded vote.

**Mr Kormos:** You'll notice it excludes credit unions.

**The Chair:** Sections 55, 56 and 57: Shall sections 55, 56 and 57 of the bill carry? All those in favour? All those opposed? I declare sections 55, 56 and 57 of the bill carried.

Section 58, committee motion 78, a Liberal motion —

**Ms Castrilli:** Recorded vote, please.

**The Chair:** Section 58, a Liberal motion. A recorded vote is deferred.

Committee motion 79, section 58 —

**Mr Kormos:** A recorded vote, please.

**The Chair:** Committee motion 79 is identical to committee motion 78 and, as such, it will be called out of order.

**Mr Kormos:** Very good. I was tired of calling my own motions out of order.

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**The Chair:** Shall sections 59 through to 64 carry? All those in favour? All those opposed? Sections 59 through to and including 64 are carried.

Section 65 —

**Ms Castrilli:** I'd like to withdraw this motion. We talked about this problem yesterday with the haste to get — you can't withdraw?

**The Chair:** Can she withdraw it?

**Clerk of the Committee:** Yes, but there's no debate.

**Ms Castrilli:** All right. Very well.

**The Chair:** Committee motion 80 has been withdrawn. Committee motion 81.

**Mr Kormos:** Withdrawn.

**The Chair:** Withdrawn.

Shall section 65 of the bill carry? All those in favour? All those opposed? I declare section 65 of the bill carried.

Section 66, committee motion 82, subsection 66(1.1) of the bill, Liberal motion —

**Mr Kormos:** A recorded vote.

**The Chair:** Deferred.

Committee motion 83.

**Mr Kormos:** A recorded vote.

**The Chair:** A recorded vote shall be deferred.

Shall sections 67, 68 and 69 of the bill carry? All those in favour? All those opposed? I declare sections 67, 68 and 69 carried.

Section 70.

**Ms Castrilli:** A recorded vote, please.

**The Chair:** Recorded vote.

**Mr Martiniuk:** What motion was that?

**The Chair:** Committee motion 84.

**Ms Castrilli:** We've requested a recorded vote. That's it.

**Clerk of the Committee:** Yes, there's a motion.

**Mr Martiniuk:** I'm sorry?

**The Chair:** The vote is deferred, and as such, we cannot vote on the section until we've had that vote.

**Mr Kormos:** Quite right. Right on.

**The Chair:** We've had two deferrals.



Shall sections 71 to 80, inclusive, carry? All those in favour? All those opposed? I declare sections 71 to 80, inclusive, carried.

Committee motion 85, section 81 of the bill, a Liberal motion: Shall committee motion 85 carry? All those in favour? All those opposed? I declare committee motion 85 defeated.

Shall section 81 of the bill carry? All those in favour? All those opposed? I declare section 81 of the bill carried.

Shall sections 82 and 83 of the bill carry? All those in favour? All those opposed? I declare sections 82 and 83 of the bill carried.

Committee motion 86, subsection 84(1) of the bill, a government motion: Shall committee motion 86 carry? All those in favour? All those opposed? I declare committee motion 86 carried.

Shall section 84 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 84, as amended, carried.

Shall sections 85, 86 and 87 of the bill carry? All those in favour? All those opposed? I declare sections 85, 86 and 87 of the bill carried.

Committee motion 87, subsections 88(1) and (2) of the bill, a government motion: Shall committee motion 87 carry? All those in favour? All those opposed? I declare committee motion 87 carried.

Committee motion 88, subsection 88(3) of the bill, government motion: Shall committee motion 88 carry? All those in favour? All those opposed? I declare committee motion 88 carried.

Shall section 88 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 88, as amended, carried.

Committee motion 89, subsection 89(1) of the bill, a government motion: All those in favour of committee motion 89? All those opposed? I declare committee motion 89 carried.

Committee motion 90, section 89 of the bill, a Liberal motion —

**Ms Castrilli:** A recorded vote.

**The Chair:** Recorded vote.

Committee motion 91, subsection 89(2) of the bill, a Liberal motion: Shall committee motion 91 carry? All those in favour? All those opposed? I declare committee motion 91 defeated.

Shall section 90 of the bill carry? All those in favour? All those opposed? I declare section 90 of the bill carried.

Committee motion 92, subsections 91(1) and (1.1) of the bill, a government motion: Shall committee motion 92 carry? All those in favour? All those opposed? I declare committee motion 92 carried.

Committee motion 93, subsection 91(1) of the bill, Liberal motion: Shall committee motion 93 carry? All those in favour? All those opposed? I declare committee motion 93 of the bill defeated.

Committee motion 94, subsection 91(2) of the bill, government motion: Shall committee motion 94 carry? All those in favour? All those opposed? I declare committee motion 94 carried.

Committee motion 95, subsection 91(2) of the bill, Liberal motion: Shall committee motion 95 carry? All those in favour? All those opposed? I declare committee motion 95 defeated.

Committee motion 96, subsection 91(3) of the bill: Shall committee motion 96 of the bill carry? All those in favour? All those opposed? I declare committee motion 96 carried.

Committee motion 97, subsection 91(3) of the bill, a Liberal motion: Shall committee motion 97 carry? All those in favour? All those opposed? I declare committee motion 97 defeated.

Committee motion 98, subsection 91(4) of the bill, a government motion: Shall committee motion 98 carry? All those in favour? All those opposed? I declare committee motion 98 carried.

Committee motion 99, subsection 91(4) of the bill, a Liberal motion: Shall committee motion 99 carry? All those in favour? All those opposed? I declare committee motion 99 defeated.

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Committee motion 100, subsection 91(5) of the bill, a Liberal motion: Shall committee motion 100 carry? All those in favour? All those opposed? I declare committee motion 100 defeated.

Committee motion 101, subsection 91(6) of the bill, a Liberal motion: Shall committee motion 101 carry? All those in favour? All those opposed? I declare committee motion 101 defeated.

Committee motion 102, subsection 91(7) of the bill, a Liberal motion: Shall committee motion 102 carry? All those in favour? All those opposed? I declare committee motion 102 defeated.

Committee motion 103, subsections 91(7), (8), (9), (10), (11) and (12) of the bill, a government motion: Shall committee motion 103 of the bill carry? All those in favour? All those opposed? I declare committee motion 103 carried.

Shall section 91 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 91, as amended, carried.

Shall sections 92 and 93 of the bill carry? All those in favour? All those opposed? I declare sections 92 and 93 of the bill carried.

Shall section 94 of the bill carry? All those in favour? All those opposed? I declare section 94 of the bill carried.

New section, committee motion 104, sections 94.1 and 94.2 of the bill, a Liberal motion: Shall committee motion 104 of the bill carry? All those in favour? All those opposed? I declare committee motion 104 defeated.

Committee motion 105, subsection 95(1) of the bill, a government motion: Shall committee motion 105 carry? All those in favour? All those opposed? I declare committee motion 105 carried.

Committee motion 106, subsection 95(3) of the bill, a government motion: Shall committee motion 106 carry? All those in favour? All those opposed? I declare committee motion 106 carried.

**Mr Kormos:** After all the squealing that Harnick did in the House —

**The Chair:** No debate. Thank you, Mr Kormos. You gave me a moment to wet my whistle again, shall we say.

Committee motion 107, subsection 95(3) of the bill, a Liberal motion.

**Ms Castrilli:** Chair, I think this motion is out of order since you struck out the section this was supposed to amend.

**The Chair:** Committee motion 107 is out of order and withdrawn.

Shall section 95 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 95 of the bill, as amended, carried.

Section 96, committee motion 108, clause 96(1)(b) of the bill, a Liberal motion: Shall committee motion 108 of the bill carry? All those in favour? All those opposed? I declare committee motion 108 defeated.

Committee motion 109, clause 96(1)(d) of the bill, a Liberal motion: Shall committee motion 109 of the bill carry? All those in favour? All those opposed? I declare committee motion 109 defeated.

Committee motion 110, clause 96(1)(n) of the bill, a government motion: Shall committee motion 110 of the bill carry? All those in favour? All those opposed? I declare committee motion 110 carried.

The next one is identical and, as such, is out of order and withdrawn.

**Ms Castrilli:** Only because the government saw the wisdom of our amendment.

**The Chair:** Committee motion 112, clause 96(1)(o.1) of the bill, a government motion: Shall committee motion 112 of the bill carry? All those in favour? All those opposed? I declare committee motion 112 of the bill carried.

Committee motion 113, clause 96(1)(p.1) of the bill, a government motion: Shall committee motion 113 of the bill carry? All those in favour? All those opposed? I declare committee motion 113 of the bill carried.

Committee motion 114, clause 96(1)(p.1) of the bill, a Liberal motion.

**Ms Castrilli:** A recorded vote.

**The Chair:** A recorded vote and, as such, it is deferred.

Committee motion 115, clause 96(1)(r.1) of the bill, a government motion: Shall committee motion 115 carry? All those in favour? All those opposed? I declare committee motion 115 of the bill carried.

Committee motion 116, clause 96(2)(b) of the bill, a Liberal motion: Shall committee motion 116 of the bill carry? All those in favour?

**Mr Kormos:** A recorded vote.

**The Chair:** A recorded vote and, as such, it is deferred.

Committee motion 117 is identical to 116 and, as such, is out of order and withdrawn.

**Mr Kormos:** Chair, it wasn't really out of order when the previous motion hadn't been voted on yet. So it's not a matter of having already —

**The Chair:** It's because we're waiting to vote on it so the outcome will be determined at a later day.

**Mr Kormos:** But is it out of order yet? It's only out of order when the previous motion is voted on.

**The Chair:** OK. Committee motion 118 —

**Mr Kormos:** To get back to 117, you've ruled it out of order. I'm saying to you that it's not out of order.

**The Chair:** I've determined it's out of order.

**Mr Kormos:** You're walking where angels fear to tread, you know that.

**Mr Rollins:** Yes, but he's got a black halo.

**The Chair:** Committee motion 118 relied on committee motion 44.

**Ms Castrilli:** I withdraw it because we defeated a previous motion.

**The Chair:** As such it is out of order and is withdrawn.

Section 97 of the bill: Shall section 97 of the bill carry? All those in favour? All those opposed? I declare section 97 of the bill carried.

Section 98, committee motion 119, subsection 98(1) of the bill, a government motion: Shall committee motion 119 carry? All those in favour? All those opposed? I declare committee motion 119 carried.

Committee motion 120, subsection 98(2) of the bill, a government motion: Shall committee motion 120 carry? All those in favour? All those opposed? I declare committee motion 120 carried.

Committee motion 121, subsection 98(3) of the bill, a government motion: Shall committee motion 121 of the bill carry? All those in favour? All those opposed? I declare committee motion 121 carried.

Shall section 98 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 98 of the bill, as amended, carried.

Shall sections 99, 100 and 101 of the bill carry? All those in favour? All those opposed? I declare sections 99, 100 and 101 of the bill carried.

Committee motion 122, section 102 of the bill, subsection 67(2) of the Freedom of Information and Protection of Privacy Act, a government motion: Shall committee motion 122 of the bill carry? All those in favour? All those opposed? I declare committee motion 122 of the bill carried.

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Shall section 102 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 102 of the bill, as amended, carried.

Shall section 103 of the bill carry? All those in favour? All those opposed? I declare section 103 of the bill carried.

Committee motion 123, section 104 —

**Ms Castrilli:** On a point of order, Chair: I've really struggled with this section. Clause (b) in fact doesn't exist. I don't know what it refers to in terms of the —

**The Chair:** There's no debate.

**Ms Castrilli:** All right. Just so you know, it doesn't make sense.

**The Chair:** Thank you. Committee motion 123, section 104 of the bill, a government motion: Shall committee



motion 123 of the bill carry? All those in favour? All those opposed? I declare committee motion 123 of the bill carried.

Shall section 104 of the bill, as amended, carry? All those in favour? All those opposed? Section 104 of the bill, as amended, is carried.

Shall sections 105, 106 and 107 of the bill carry? All those in favour? All those opposed? I declare sections 105, 106 and 107 of the bill carried.

Section 108, committee motion 124, subsection 108(4) of the bill, a government motion: Shall committee motion 124 carry? All those in favour? All those opposed? I declare committee motion 124 of the bill carried.

Shall section 108 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 108, as amended, carried.

Section 109, committee motion 125, subsection 109(2) of the bill, a government motion: Shall committee motion 125 of the bill carry? All those in favour? All those opposed? I declare committee motion 125 of the bill carried.

Committee motion 126, subsection 109(3) of the bill, a government motion: Shall government motion 126 of the bill carry? All those in favour? All those opposed? I declare committee motion 126 of the bill carried.

Shall section 109 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 109, as amended, carried.

Shall section 110 of the bill carry? All those in favour? All those opposed? I declare section 110 of the bill carried.

Shall the long title of the bill carry? All those in favour? All those opposed? I declare that the long title of the bill is carried.

Now I move to the deferred and recorded votes. Shall section 46, as amended —

**Mr Kormos:** Section 46?

**The Chair:** Yes. A recorded vote was requested.

*Interjections.*

**Ms Castrilli:** Wasn't 70 deferred?

**Clerk of the Committee:** No. The question was a deferred vote on section 46. The amendment on page 70 was carried.

**Ms Castrilli:** All right. I wasn't aware of that.

**The Chair:** Shall section 46 of the bill, as amended, carry?

**Ayes**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**Nays**

Castrilli, Crozier, Kormos.

**The Chair:** I declare section 46 of the bill, as amended, carried.

Shall section 54 of the bill carry?

**Ayes**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**Nays**

Castrilli, Crozier, Kormos.

**The Chair:** I declare section 54 carried.

Shall committee motion 78, section 58 of the bill, carry?

**Ayes**

Castrilli, Crozier, Kormos.

**Nays**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**The Chair:** I declare committee motion 78 defeated.

As such, committee motion 79 is out of order.

We shall call for a recorded vote on section 58 of the bill.

**Ayes**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**Nays**

Castrilli, Crozier, Kormos.

**The Chair:** I declare section 58 carried.

Section 66, committee motion 82.

**Ayes**

Castrilli, Crozier, Kormos.

**Nays**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**The Chair:** I declare committee motion 82 defeated.

Shall committee motion 83 of the bill carry?

**Interjection:** Can you read it?

**The Chair:** Subsection 66(1.1) and (1.2) of the bill —

**Ms Castrilli:** Chair, I have to absent myself to speak in the House. I may not be back in time. I want to thank everyone involved in this process. You've been wonderful. Your civility and grace have been fabulous. I even want to thank the parliamentary assistant, who's been so gracious today; Ms Austin, who's been incredible in her technical expertise, particularly the technical people. If I could, I'd like to single out our legal counsel, who did a mammoth job with virtually no time at all.

**The Chair:** Thank you for giving me that little bit of a break.

**Mr Kormos:** As Isabel Bassett said about Dalton McGuinty —

**The Chair:** Order, please. Back on to committee motion 83. We were having a recorded vote.

**Ayes**

Crozier, Kormos.

**Nays**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**The Chair:** I declare the motion defeated.

Shall section 66 of the bill carry? Recorded vote as well.

**Mr Kormos:** Chair, why is it a recorded vote? There was no call for a recorded vote.

**The Chair:** Shall 66 carry? All those in favour? All those opposed? I declare section 66 of the bill carried.

Committee motion 84, subsection 70(2) of the bill.

**Ayes**

Crozier, Kormos.

**Nays**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**The Chair:** I declare committee motion 84 defeated.

Shall section 70 of the bill carry? All those in favour? All those opposed? I declare section 70 of the bill carried.

Committee motion 90, section 89 of the bill, a Liberal motion.

**Ayes**

Crozier, Kormos.

**Nays**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**The Chair:** I declare committee motion 90 defeated.

Shall section 89 of the bill, as amended, carry?

**Mr Kormos:** Did we call for a recorded vote?

**The Chair:** No. Shall section 89 of the bill, as amended, carry? All those in favour? All those opposed? I declare section 89 of the bill, as amended, carried.

Committee motion 114, clause 96(1)(p.1) of the bill, a Liberal motion.

**Ayes**

Crozier, Kormos.

**Nays**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**The Chair:** I declare committee motion 114 defeated.

Committee motion 116, clause 96(2)(b) of the bill, a Liberal motion.

**Ayes**

Crozier, Kormos.

**Nays**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**The Chair:** I declare committee motion 116 defeated.

Shall section 96 of the bill, as amended, carry?

**Ayes**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare section 96 of the bill, as amended, carried.

Shall Bill 68, as amended, carry? All those in favour?

**Mr Kormos:** Recorded vote.

**Ayes**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare Bill 68, as amended, carried.

Shall Bill 68, as amended, be reported to the House?

**Mr Kormos:** Recorded vote.

**Ayes**

Martiniuk, O'Toole, Rollins, Stewart, Bob Wood.

**Nays**

Crozier, Kormos.

**The Chair:** I declare that Bill 68, as amended, shall be reported to the House.

Thank you. This concludes the standing committee on administration of justice hearing of Bill 68, the Legal Aid Services Act.

*The committee adjourned at 1725.*



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Tuesday 24 November 1998

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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Second Session, 36<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 36<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 1 December 1998  
Monday 7 December 1998

Standing committee on  
administration of justice

Organization

Law Society  
Amendment Act, 1998

# Journal des débats (Hansard)

Mardi 1<sup>er</sup> décembre 1998  
Lundi 7 novembre 1998

Comité permanent de  
l'administration de la justice

Organisation

Loi de 1998 modifiant  
la Loi sur le Barreau



Chair: Jerry J. Ouellette  
Clerk: Tonia Grannum

Président : Jerry J. Ouellette  
Greffière : Tonia Grannum



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Tuesday 1 December 1998

Mardi 1<sup>er</sup> décembre 1998*The committee met at 1542 in room 228.*

## ORGANIZATION

**The Chair (Mr Jerry J. Ouellette):** I call this meeting to order. Actually, I believe the clock here is four minutes fast. I've tried to indulge the committee members, because of the number of changes we've had, with the various times to ensure that we could have as many members as possible here for the discussion of Bill 53.

**Mr Gerry Martiniuk (Cambridge):** The problem, as I understand it, is very simple. The House will hopefully rise on December 17. I say "hopefully," and I mean that sincerely. I would like to be out of here by December 18.

That means that to have hearings in clause-by-clause and have the bill printed in time for third reading before the House rises is most difficult. Really, the only way it can work is that we have one day of hearings on December 7 and one day of clause-by-clause on December 8, and that is the proposal I am making.

*Interjection.*

**Mr Martiniuk:** I can make a motion, but I just wanted the comment of the opposition.

**The Chair:** I think you move it and we open it up for discussion. Do you have any problem with that?

**Mr Martiniuk:** Then I move:

(1) That the standing committee on administration of justice meet on Monday, December 7, 1998, for the purpose of public hearings on Bill 53, An Act to amend the Law Society Act, and that on that day there be a 10-minute briefing by staff, and each opposition caucus would then have one 10-minute statement.

The hearing would proceed on that day. I understand we have a number of organizations and I am therefore suggesting 15 minutes per witness. We already have approximately eight. I'll continue on, and then we can discuss it.

(2) That the standing committee on administration of justice meet on Tuesday, December 8, 1998, for the purpose of clause-by-clause consideration of Bill 53.

(3) That each party may submit a list of potential witnesses to the Chair or clerk by Wednesday, December 2, 1998, by 4 pm. The Chair would choose witnesses on a rotational basis from those lists, as is the customary tradition of this committee; and that we can decide upon the deadline.

I am suggesting — or I am moving — that the deadline for amendments of all parties be 12 o'clock on Tuesday, December 8, which will give us the morning of that day to prepare the amendments resulting from the hearings the day before.

**The Chair:** Discussion?

**Mr David Ramsay (Timiskaming):** I have no objection to that proposal.

**The Chair:** Mr Wildman, just so you know, what has been suggested is that on Monday, December 7, there is a presentation and 10-minute responses from each of caucuses. Then after that time, we'll move to witnesses on Monday, December 7, for 15-minute presentations.

Has everybody received a list of the individuals who want to make presentations. Then — I believe you came in at that point — we're to move on to December 8 as well.

**Mr Bud Wildman (Algoma):** Obviously, I am just subbing for our member, but just as a matter of interest, on this list you've misspelled "Carleton." There is an "e" between the "l" and the "t."

**The Chair:** I'll certainly look into that, Mr Wildman. We appreciate that.

**Mr Wildman:** How long are you anticipating that each of these presenters would have?

**The Chair:** Fifteen minutes was the recommended time.

**Mr Martiniuk:** We want to make sure we hear as many as possible. We would take them from the three lists of each party. I mean, we don't even have the law society on that list.

**Clerk of the Committee (Ms Tonia Grannum):** These are just people who have contacted us.

**Mr Martiniuk:** Yes, these are just people who have contacted us, so we have our witnesses in addition to that.

**Mr Wildman:** Frankly, we're not heavy about this, but what we would propose is 20 minutes each and that we have two days of hearings rather than one.

**Mr Ramsay:** I've just consulted with our House leader's staff, and that's the understanding that our House leader has also, that it was two days of hearings and one of clause-by-clause.

**Mr Wildman:** That's right. That's what we understood. We indicated to the government House leader — and I recognize that the committee orders its own business; I'm not suggesting that the House leaders direct it. But we had indicated to the government House leader that



we didn't want to prolong the debate on this matter and we wanted to assist in getting it done before Christmas, if possible, but we thought two days of hearings would be appropriate.

**The Chair:** I think what was suggested was that we have the Monday and the Tuesday for hearings as well, and then clause-by-clause after the hearings?

**Mr Wildman:** Yes, one day of clause-by-clause.

**Mr Martiniuk:** My friends pointed out that there were to have been two days, which would require clause-by-clause on the Wednesday if we're going to complete it, which will require a resolution of the House.

You're quite right. I would amend what I've said and suggest that we will have two days of hearings, Monday, December 7, 1998, and Tuesday, December 8, 1998, at the usual times, and that we will request that the House permit us to sit on Wednesday, Dec 9, 1998, for the clause-by-clause from 3:30 to 6 pm on that date; and that the witnesses be permitted 20 minutes each, rather than the 15 mentioned. Possibly, we can then change the deadline to 9 pm for filing amendments; that deadline would now be 9 pm on December 9.

**Mr Wildman:** Wildman's the name and compromise is the game.

**Clerk of the Committee:** Sorry. The deadline for amendments is when?

**Mr Martiniuk:** Sorry. It's at 9 am, not 9 pm, on Wednesday, December 9. This is all subject to the House passing the necessary unanimous consent resolution permitting us to meet on Wednesday from 3:30 to 6 for clause-by-clause.

**Mr Wildman:** And if we don't finish then, we can move a House resolution that the committee can sit on December 28.

*Laughter.*

**Mr Ramsay:** We did that in the late 1980s. Don't laugh.

**Mr Wildman:** We did that one time. It was terrible.

**The Chair:** Is there further discussion that needs to come forward from the members on the issue? No?

**Mr Ramsay:** That's agreed.

**The Chair:** What about advertising? It was a bit of an issue during the last one.

**Mr Martiniuk:** The parliamentary channel.

**The Chair:** Anything else?

**Mr Martiniuk:** It's an exclusive interest.

**Mr Ramsay:** This is, yes. This isn't a broad-interest bill.

**The Chair:** And that's acceptable with the committee members?

**Mr Wildman:** Yes.

**Mr Ramsay:** Yes. Tell Peter, though, eh?

**Mr Wildman:** He had the chance to be here.

**The Chair:** That has been mentioned in the past. I think the comment then came back that if the hound had not stopped to mark the tree, he would have caught the hare.

It was put in the form of a motion. Is it agreed upon? Agreed.

No further business of the committee? This committee is adjourned until Monday, December 7.

*The committee adjourned at 1552.*

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Tuesday 1 December 1998

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### STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Monday 7 December 1998

Lundi 7 décembre 1998

*The committee met at 1533 in room 228.*

## LAW SOCIETY AMENDMENT ACT, 1998

LOI DE 1998 MODIFIANT  
LA LOI SUR LE BARREAU

Bill 53, An Act to amend the Law Society Act / Projet de loi 53, Loi modifiant la Loi sur le Barreau.

STATEMENT BY THE MINISTRY  
AND RESPONSES

**The Chair (Mr Jerry Oullette):** I bring this committee to order. At this time we will proceed with the technical briefing, and I believe the agreement was 10, 10 and 10. So there's 10 minutes for a briefing and there are 10-minute responses from each of the opposing caucuses. Thank you for coming, and you may begin.

**Ms Kathleen Beall:** Good afternoon, members of the committee. My name is Kathleen Beall and I'm counsel with the policy branch of the Ministry of the Attorney General. With me is Judith Grant, who is also counsel with the policy branch of the Ministry of the Attorney General.

What I'd like to do in the 10 minutes I have is to quickly, but hopefully thoroughly, take you through the main points of Bill 53. I won't be going through it section by section due to the length of time, but instead will give you an overview of the contents of the bill.

The bill addresses the membership and election of its governing body, which is known as convocation. The governing body is made up of benchers. The highlights of these amendments: They will increase the number of lay or non-lawyer benchers from four to eight. They will provide for a regional election of benchers, not just benchers from inside and outside of Toronto. And the bill will incorporate a new corporate structure, creating a position of a chief executive officer and removing the position of under-treasurer.

The bill repeals the present provisions concerning discipline of members and replaces them with a new and comprehensive scheme. The bill creates a complaints resolution commissioner who will be appointed by convocation. The commissioner may not be a bencher or a person who has been a bencher within the past two years.

The commissioner may not engage in the practice of law while being commissioner.

The complaints resolution commissioner is to attempt to resolve complaints that are referred to him or her for resolution and to review and, as appropriate, attempt to resolve complaints referred to him for a review. This is an alternate process for addressing and attempting to resolve complaints in addition to a more formal hearing process.

The commissioner has the power to investigate complaints in the process of helping to resolve them and may delegate his powers to the staff. The complaints resolution commissioner and staff may not disclose any information that he or she receives in the course of their investigation.

The bill also sets out investigation powers for the society. It sets out the power to conduct an audit into the financial records of members to determine if they comply with the bylaws. It also provides that the secretary must require an investigation if the secretary receives information suggesting a member may have engaged in professional misconduct or conduct unbecoming of a barrister or solicitor.

It also sets out that the secretary must require an investigation if the secretary is satisfied there are reasonable grounds to believe that a member may be or has been incapacitated.

There is also the power to conduct an investigation for professional incompetence, to review a member's practice if circumstances exist as set out in the bylaws.

The powers of an investigator in any of these investigations or review include the power to enter property during business hours, require production of relevant documents, and make inquiries of those who work with the member.

There are also provisions for confidentiality of materials and information. In an investigation or review, a person is required to provide documents and information even if it is protected by solicitor-client confidentiality, but the provision of this information does not negate or waive solicitor-client confidentiality. An investigator may remove materials for copying. However, there are protections for the confidentiality of information. All information received in an investigation or review remains confidential and cannot be disclosed for any proceeding except for a proceeding under this act, or unless it is already public information or the parties who may be affected have given consent.

There may be application to the Ontario Court (General Division) for a search-and-seizure order when necessary



during an investigation, and there may be an application to the Ontario Court (General Division) for an order permitting disclosure of information to public authorities with the exception of information that may be incriminating to a person or material subject to solicitor-client privilege.

The bill establishes a proceedings authorization panel which is to review matters referred to it, and the society must get the authorization of the proceedings authorization panel before it can refer professional misconduct, capacity, and professional competence matters to the hearings panel. The bill establishes a hearings panel which consists of benchers, except for specified members, benchers, such as the Attorney General — attorneys general Canada and Ontario — and may not consist of members of the proceedings authorization committee.

The chair of the hearings panel is appointed by the convention. The hearings panel must hold a hearing before determining the matter before it if specified in the act.

A French-speaking party may have a French-speaking panel for their hearing.

The hearing panel can determine questions of law and fact and make such orders as are set out in the act and others as it may find appropriate.

There are certain types of hearings which go before a hearings panel. One is a hearing to determine if a member has engaged in professional misconduct or conduct unbecoming a barrister or solicitor. If such a hearing is to go to the hearings panel, the law society must get consent or authorization of the proceedings authorization committee first.

If the question of professional misconduct or conduct unbecoming is being dealt with by the complaints review commissioner referred to earlier, then the hearings panel cannot hear the matter. It has to remain with the complaints review commissioner.

**1540**

There's also the authority to have hearings into the capacity of a member. The bill describes activities that constitute incapacity: where a member by reason of physical or mental illness, other infirmity, addiction to or excessive use of alcohol or drugs or other cause is incapable of meeting the obligations of a member. Again, before a matter goes to the hearings panel, the authorization of the proceedings authorization committee is required.

In the course of a hearing, the hearings panel may order the member to undergo medical or psychological examination to assess whether the member is incapacitated and the extent of recovery or prognosis for recovery. At the determination of a hearing, the hearing panel may make a wide range of orders which provide for flexibility of orders from the hearing panel in these matters.

Another hearing that may go to the hearings panel is for professional competence, to determine whether members meet the standard for professional competence as set out in the bylaw. Again, such a hearing requires the authorization of the proceedings authorization committee. The act again sets out the powers of the hearings panel to make orders.

The hearings panel may also hear applications concerning reinstatement and readmission to the society for members who have had their membership either suspended or removed for certain circumstances.

Final decisions of the hearing panel may go to the appeal panel. The act establishes the appeal panel, which is to consist of at least seven benchers, at least three benchers and one bencher, and the convocation appoints the chair of the appeal board. The appeal panel has the authority to decide matters of law and fact and may make any order that a hearing panel could make, order a new hearing before a hearing panel, or dismiss an appeal. Again, French-speaking parties may have a French-speaking appeal panel.

Appeals lie from the appeal panel to the Divisional Court on final decisions on conduct, capacity and reinstatement. Again, the parties may appeal on any grounds, but the society may appeal on questions of law only.

In addition to the types of orders that the different panels have the authority to make, there are provisions for summary orders for more technical matters. Specifically appointed benchers will have the authority to order the summary suspension of a member for failing to pay required fees or levies or for failing to file the required certificates or reports. An individual bencher may also order the summary revocation of membership for failing for more than 12 months to file the required fees or levies or certificates or reports. There may also be a summary suspension for failing to meet the requirements of legal education as set out in the bylaws or for failing to make substantial use of legal skills for a continuous period as set out in the bylaws.

The act also provides for new types of orders, freezing orders, in addition to trusteeship orders. The Ontario Court (General Division) can make a freezing order, an order that property in the hands of a member shall not be paid out or dealt with by any person without leave of the court.

It also provides that the Ontario Court (General Division) can make a trusteeship order that property is to be held in trust by the society or another person appointed by the court. This provision sets out the types of property these orders apply to, and this will be property in the possession or control of a member that relates to, for example, the practice of a member, the business affairs of a client or a former client, or the estate where the member is the executor, administrator or trustee. Such an order can be made only if the membership of the member has been revoked or suspended, the member has died or disappeared, has abandoned the practice, or there are reasonable grounds to believe that the member may have dealt improperly with the property.

**The Chair:** Can I ask if there's very much more? You're nearing and actually just slightly past your 10 minutes.

**Mr Peter Kormos (Welland-Thorold):** Chair, if I may, I quite frankly don't anticipate using all of my 10

minutes. I don't know how much more time she's got in her presentation. I'd like to hear —

**The Chair:** Are you asking for unanimous agreement to allow her to finish?

**Mr Kormos:** Of course.

**Ms Annamarie Castrilli (Downsview):** Agreed.

**The Chair:** Carried. You may continue on.

**Ms Beall:** Thank you. I am almost done.

Those are the main provisions I wanted to highlight for the committee's attention, but there are some other provisions in this act.

The act does create a new offence of giving legal advice about a non-Ontario or a foreign jurisdiction's law.

The society may now apply to the Ontario Court (General Division) for an order prohibiting a person from acting as a lawyer not only if a person has been convicted of unauthorized practice of the law but also if a person's membership has been revoked or the person has been permitted to resign without a conviction having been pursued or entered.

The act provides for the creation of the ability of the society to have unclaimed trust funds. A member of the society who has unclaimed trust funds and has not been able to locate a person entitled to the money for two years or more may pay the money to the society along with the related financial records. This extinguishes the member's liability as trustee or fiduciary. The society then holds the money in trust for the purposes of payment to the entitled purpose. The interest from the money that is held in trust is to go to the law foundation, and the society is to give an account of the money in trust to the Ontario Court (General Division) from time to time. The society is to publish a list of persons entitled to the money and to take appropriate steps to locate the person, and a person who believes they are entitled to the money may make a claim to the society for the money. If there is a dispute between that person and the society, the claim may go to the Ontario Court (General Division).

The bill also provides for members to form limited liability partnerships pursuant to the limited liability Partnerships Act. This would mean that a member who is a member of a limited liability partnership is not responsible for the negligent actions of the other partner. This will require higher levels of insurance for the partnership and other requirements set out in the limited liability Partnerships Act.

Finally, for clarification, the term "rules" as found in the present act will be changed to "rules of practice and procedure," and the bylaws of the act, those rules of the act which are more appropriately to be bylaws, will be made into bylaws, and the society is given the power to make bylaws in the new provisions. This will clarify the distinction between rules, rules of practice, and bylaws.

The unproclaimed provisions concerning law corporations as found in the present act is repealed. There will be the appropriate definitions sections arising from these changes and consequential amendments, and the act does provide for transitional provisions. Thank you.

**The Chair:** Thank you very much. We now move to the official opposition for comments.

**Ms Castrilli:** I won't take very long because frankly I'd like to hear from the presenters here today. Many of us have had the opportunity to comment on this legislation in the House.

Let me just say, though, that the thrust of this legislation is welcome. The law society certainly has made an admirable case and it's reflected here in the legislation. It's been a long time since we've had any changes to the Law Society Act, and I think these amendments go a long way to increasing public confidence in the self-governing of the profession.

I guess the issues that are before us that appear on the surface to be contentious, and which I hope we will address during the course of the hearings, really revolve around two different sets of concerns, and that's what I'm going to be looking for in terms of answers during the course of this hearing.

The first set of concerns have been advanced by the privacy commissioner principally, and also by the Canadian Bar Association, but it's the privacy commissioner's letter and opinion that I really would like some discussion on today. The concerns of the commissioner — I'm not sure how much time I have, Chair. You'll have to give me some guidance.

1550

**The Chair:** Eight minutes.

**Ms Castrilli:** Terrific.

The points that the privacy commissioner makes are that some of the powers given to the law society under the amendments might infringe on solicitor-client privilege and confidentiality, and that the act may go further than required or necessary in order to investigate members' conduct. This isn't an issue of protecting dishonest lawyers. I don't think anybody in this room would condone any activity that's filed on the part of lawyers. But it is a question of balance: How are investigations against lawyers triggered, and what follows thereafter?

I think those, in the main, are the kinds of concerns voiced by the privacy commissioner. I've come here with an open mind. I want to hear the responses and the views with respect to that issue.

The second set of concerns are of a different order. They have essentially been advanced by the publishers of legal materials. I gather they are also scheduled to come before us today, and it will be very instructive to have their views. Certainly in correspondence that has been forwarded to us, it's clear that in their view the Law Society Amendment Act creates a monopoly in the law society that they feel is unwarranted. I'll be looking for some responses and some views with respect to that.

In the main, as I've said, the legislation meets the needs of revamping the act, of ensuring that the law society continues to do the work it was mandated to do, and to do it in a way that increases public accountability and public confidence. I think this act does that. The notion that you would have an increase in lay members, that there is a Complaints Review Commissioner who would review



difficulties, the fact that there would be the establishment of professional competence standards, that these would be publicized, that there would be remedial measures to ensure that the quality of lawyer service is very high: all of these are extremely good measures and we don't quibble with any of them.

I think we have some narrow points that we need to focus on, that we need to have some debate on and that we need some guidance on. They are concerns that we cannot ignore. We couldn't ignore the privacy commissioner even if we wanted to. The office is an office of the Legislative Assembly, and it's incumbent on us to make sure we get the responses we need in order to have the best possible legislation in the public interest.

With that, I want to limit my comments. I would prefer to have as many speakers as possible and as in-depth discussion as possible of the issues that we raise.

**The Chair:** Is there a necessary time to respond to some of the things you asked or should we move on?

**Ms Castrilli:** No. I don't really think, with all due respect, that there can be a response from the presenters before us at the moment.

**The Chair:** That's fine.

**Mr Kormos:** Chair, you know from second reading debate that the New Democratic Party supports in principle the thrust of the legislation. Ms Boyd spoke to it. I spoke to it. We supported it on second reading. We're eager to see it now in the committee process. I note the law society has four presentations here, so they're getting —

*Interruption.*

**Mr Kormos:** That's a quorum call, guys.

They're getting their kick at the can. Like Ms Castrilli, I've been lobbied by them. I've been similarly lobbied by the CBA and the law book publishers. I recall having referred to the letter from one of the law book publishers, in reference to his concerns, to the Attorney General. The opening paragraph of the letter makes reference to sharing cigars — I'm sure expensive ones — and cognac — I'm sure fine cognac — with the Attorney General, Mr Harnick, whom you people know, and Mr Strosberg in Halifax. I'm sure Mr Harnick paid his own way. Far be it from him to have taken a perk. Again, I understand this isn't your bailiwick. It's not for you to concern yourself with.

I read part of the letter into the record. I don't know if the author of that letter is among the presenters here this afternoon. I hope he brought the cigars with him, because surely Mr Harnick isn't the only member of the Legislature he wants to share his cigars and fine cognac with.

I'm looking forward to hearing what the CBA and the law book publishers have to say, but I'm also more interested — and I put this to the parliamentary assistant: We've only got two days of public hearings on this. I assume the list is reasonably representative, if not exhaustive, of the people who wanted to make submissions. I want to ascertain that. I wish the government would sort of show its hand at the onset. If there are areas where the

government is prepared to make amendments, say so up front so we don't waste time.

For instance, correct me if I'm wrong, Mr Martiniuk, but I understand that former attorneys general are benchers, ex officio, but that they have to be members of the law society as well. It's outrageous that you wouldn't have addressed that in this legislation, for you people to have overlooked that, to have ignored Marion Boyd and her contribution to leadership in this province.

I am going to be presenting a motion that former attorneys general, notwithstanding that they're not lawyers, also be ex officio benchers. Quite frankly, it should be an embarrassment to the government not to have addressed that in its original drafting of the bill. So I'm prepared to put forward that amendment. I'm raising this with you, parliamentary assistant. Because if the government is going to bring forward a similar amendment, say so and we won't have to debate it, and I won't make an issue of it. Similarly with respect to other matters that are going to be addressed, particularly, I suppose, the privacy commissioner — it's his statutory duty to review legislation and respond.

I'm going to listen to the participants in the hearings. You know that we support the legislation in principle, but I wish the government would indicate, as particular matters are addressed, if it's going to respond by way of amendments. That will make the process much more efficient. There are no real secrets around here and, as I say, I hope I can persuade the government to consider my proposal for an amendment to include non-law society former attorneys general as benchers. If they want to take the credit for it, fine, let the whole world know that I made the suggestion first here during these hearings.

**The Chair:** Thank you very much for coming forward today. We very much appreciate that.

## JUNE CALLWOOD

**The Chair:** With that, we would call forward our first presenter of the day, June Callwood. If you would identify yourself for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Ms June Callwood:** Thank you. I'm also not a lawyer.

**Mr Clayton Ruby:** Why don't I sit next to you.

**Ms Callwood:** Why?

**Mr Ruby:** I happen to have gotten you out of jail 30 years ago. You might rely on me.

**Ms Callwood:** He did get me out of jail.

**Mr Ruby:** Just in case there's any questions she can't answer, I can help her.

**Ms Callwood:** I was a lay bencher for four years, appointed by Ian Scott. As you may know the structure of the law society, the lay benchers sit on complaints review. It was a source of considerable concern to all of us — there were four lay benchers — that we were seeing complaints from the public against lawyers that we thought were very justified, and that the law society was not prepared to act against these lawyers.

We ascertained that close to 40% of the complaints coming to the law society were not acted on. We found there was a systemic reason for this, which was that the complaints were of a nature that fell below the threshold that the law society requires for an invitation to attend, which I think is the lowest form of discipline that is available under the present law.

We struck a committee, which I chaired, which had some very distinguished people on it. I remember most fondly Arthur Martin and others. I think it might be in your material; I hope so. It was a good committee. We came to the conclusion that a number of changes had to be made. The kinds of complaints that were driving the public crazy and not getting a response from the law society were failure to return phone calls, failure to move a file, a charge that seemed excessive but not enough to go to the exercise of having the fee taxed, rudeness. All these things were highly irritating to the clients but not actionable as far as the law society could see.

1600

We worked with Scott Kerr, who is here. I don't know his title, but he runs the complaints department, or did then. We worked with him, looking at other jurisdictions, and came to the conclusion that there were a number of simpler ways of handling these simpler complaints, such as just making a phone call to the lawyer. Previously, everything had to be in writing and it was a tedious process to get a complaint settled that way. Lawyers don't care to put their mistakes in writing. It was easier for a lawyer to admit on the telephone, "Yes, I made a mistake and I'll fix it."

Special people were hired to handle these low-resolution disputes. However, we said, "What if the lawyer refused to do what the law society was gently suggesting the lawyer should do?" We had to admit that was entirely possible. So we said there should be a complaints resolution commissioner, and this turned out to be outside the authority of the law society to establish, because there was no provision in the Law Society Act. That provision is now covered in the new legislation, and I am here in a very ovarian sense to defend this because it was my idea.

I notice, though, I might say, and then I would be very happy to respond to anything you want to ask me, that we did not resolve how this complaints commissioner should be appointed. We wanted this person, he or she — I think the other pronoun has been left out of the discussion, but we intended it to be both — to be clearly separate from the law society process, because the appearance that this was another employee of the law society would not do much to comfort an indignant client. But we left unresolved how the person should be chosen, and I see that in the legislation the person is to be chosen by the law society.

Far be it from me to rewrite a statute. But I wouldn't mind, if it that person were named by the law society, that there be very heavy input from the law society's lay benchers. That would please me a great deal. I wouldn't be awfully upset if the Attorney General also had some input.

I don't think the law society would behave badly. It is as anxious as I am to see that this is an effective position and one that has the respect of the profession, or else it's going to fail. But I think the perception of the public would be enhanced if the appointment had a very thoughtful process.

**The Chair:** That allows us approximately four minutes per caucus. We begin with the official opposition.

**Ms Castrilli:** Thank you very much for being here. We really appreciate it. It's good to have the lay perspective first, and you put it extremely well. Let me ask you about what you just talked about: the Complaints Review Commissioner and how you envision that process would actually work. I would like you to elaborate on your final comment. How would you give extra weight to lay benchers, for instance, in the selection of the Complaints Review Commissioner?

**Ms Callwood:** Not to lay benchers in the first year of appointment, because I remember how seriously I floundered. I think others might not have done as badly, but it takes a little while. I think that lay benchers with experience, especially in complaints review — once they have under their belts a year of listening to complaints and the level of frustration the public feels — would be very sympathetic to the kind of tact and diplomacy, as well as knowledge, that the commissioner would have to have. I think their input would be extremely useful.

**Ms Castrilli:** But in practical terms, how would you have more weight given to those opinions?

**Ms Callwood:** Well, the way we always do it: a five-person hiring committee and three of them are lay.

**Ms Castrilli:** In your view, should the Complaints Review Commissioner be a layperson?

**Ms Callwood:** I thought that was a swell idea because, of course, I'm not a lawyer. We considered the problem of the lawyers respecting what the commissioner said. And since the commissioner's decisions are binding and non-appealable, it would be imperative, I would think, that at least the first appointment be a lawyer highly regarded in the profession, an ex-judge, somebody unassailable. I'm afraid, with all due respect to the lay benchers, that this component would not be available to them as it would to a seasoned lawyer.

**Ms Castrilli:** You heard me say in my opening statements that one of the concerns that has been raised is the investigation of lawyers. I don't know if you as a lay bencher can help us with respect to this. Much has been made of the fact that the act, as it now stands, would trigger an investigation of lawyers on any grounds, that there's no reasonable or probable grounds category to begin an investigation into a lawyer's conduct. Can you offer us any advice as a lay bencher? We've heard from the privacy commissioner. We've heard from the CBAO. What do you have to say about that?

**Ms Callwood:** I wasn't part of the discussions leading up to that. I have no idea what led the law society to feel that that was an important power to acquire. In general, I would say it makes me nervous. If they have many cases where it is essential to their ability, on behalf of the



public, to pursue something that looks like malfeasance — I think the larger question is whether they really go after the big firms — you know, Lang Michener. I think that's a bigger question, but you can't put that in the legislation.

**Ms Castrilli:** Thank you very much.

**The Chair:** We move to the third party.

**Mr Kormos:** That was Yorkville Avenue, wasn't it, the bust? Yes, I remember. Some role model you were. You got a whole lot of us into a whole lot of trouble. You know that, don't you?

**Ms Callwood:** However, I am a completely rehabilitated ex-con.

**Mr Kormos:** Across Ontario all of us were rushing out to get busted. June Callwood got busted.

**Ms Callwood:** Yes, some role model.

**Mr Kormos:** I'm not sure if these guys know. I'm not sure what they were doing during the 1960s. I'm sure they remember every minute of the 1960s.

One of the problems I've had in the constituency offices — I'm talking about complaints — is people who really feel isolated from the complaints process. I know there's some addressing of that in the statute, in terms of almost an ombudsman role or a similar type of role to keep people acquainted. I don't know if you share with me the observation that people don't understand what's going on. You have a lot of people who don't feel they're articulate enough, that their writing skills aren't sufficient.

**Ms Callwood:** That's right, especially people whose first language isn't English. Absolutely.

**Mr Kormos:** Exactly. What's your response in terms of addressing that? Should the law society be providing advocates for people who want to make complaints, an advocate's office for people who want assistance in making complaints?

**Ms Callwood:** Our committee recommended that the complaints commissioner should travel around the province — access is a huge issue — and be much more accessible in that way. I haven't been a benchler for nearly 10 years, but my general feeling was that there was a considerable amount of compassion and sympathy for the clients in the complaints department and that they shared to some degree the frustration that we lay benchers felt. It all comes down to people, as you know, Mr Kormos. If there are good people there, then good work is going to get done. You want to write a law so that bad people can't wreck it.

1610

**Mr Kormos:** I should indicate I'm extremely supportive of your proposition and I'm glad it's here in the bill. It's the Callwood amendments.

**Ms Callwood:** Yes.

**Mr Kormos:** We'll give them good credit. I come from small-town Ontario where we don't tend to have Lang Micheners, those types of law firms. Again, speaking to the whole matter of small law firms that are under incredible time pressure, incredible financial pressures, increasingly so, single practitioners, you say not answering phone calls. I have no doubt that's one of the most common complaints, sadly. What should the law society

be doing in terms of, rather than after the fact responding to a complaint, helping those lawyers develop procedures, practices, skills, models, patterns that address that?

**Ms Callwood:** I discovered that they have a considerable amount of resources within the law society to help lawyers. We had one occasion of a lawyer who had a serious cocaine habit and there was a great deal of understanding — not of the mess he'd made of his practice but of the disaster for that individual. There is professional and personal counselling available. There's more of a tiny little heart beating there than you might think.

**The Chair:** We'll move to the government members.

**Mr Gerry Martiniuk (Cambridge):** I just have one question and my colleague Mr Wood will ask one.

Thank you very much for your presentation. I'm really curious about your experience as a lay benchler, because here you are with a bunch of lawyers. I was wondering if you have any difficulties, or if there would be any education or training that could be given to lay benchers because we're expanding or doubling the number. It's an excellent idea for the public perspective, but I get the feeling that perhaps a lay benchler might be a bit lost in the earlier parts of their term.

**Ms Callwood:** That's extremely astute of you. We were told by Ian Scott, all four of us who were appointed by him, that it would only take a day or two a month and I was eventually on 11 committees. The last year I was there, I was on 11 committees. I could have done with an orientation. It doesn't need to be in the statute, but it certainly should be built into the process.

**Mr Bob Wood (London South):** Of the complaints that came before you when you were on the bench, what proportion do you think were justified?

**Ms Callwood:** I thought almost all of them. You could sometimes see — this must happen with elected people as well — that some people are driven nearly crazy by their frustrations and they go over the edge, they go too far, because they're so frustrated. We would have in front of us somebody who seemed like a demented person and couldn't get a straight story out because they're so frustrated, but at the kernel of it was some lawyer who had not behaved well. I would say that of the cases that were appealed to us, I don't know any that didn't have some justification.

**Mr Bob Wood:** When you say justification, you mean justification to attract discipline?

**Ms Callwood:** To have something happen other than to get a letter from the law society, which was the procedure at the time, saying that your complaint has been rejected.

**Mr Bob Wood:** What proportion of the complainants you dealt with do you think left satisfied?

**Ms Callwood:** None, because the law society did not act on a single complaint that I know of.

**Mr Bob Wood:** Do you have any feel, of all of them that were justified, for what proportion would have attracted discipline and what proportion would have required resolution outside discipline?

**Ms Callwood:** All of them could have been resolved outside discipline — no, I've gone too far. Maybe 5% to 10% I thought were serious discipline issues. They went to

the chair of the discipline body — I forget the words now — and the chair rejected them as — anyway, the chair rejected them, which drove us crazy and that led directly to the committee.

**The Chair:** Thank you very much for coming forward today. We really appreciate it.

**Ms Callwood:** Thanks for your help, Mr Ruby.

#### LAW SOCIETY OF UPPER CANADA

**The Chair:** For the individuals and committee members, just so they realize, we've asked for a minor change, that the 4:20 presentation change places with the 5 o'clock presentation.

At this time I would ask the representative or representatives of the Law Society of Upper Canada to come forward, please. If you could identify yourself for Hansard, we would appreciate it. Thank you for coming, and you may begin.

**Ms Hope Sealy:** My name is Hope Sealy. I was a lay benchner from 1992 until June of this year. With me at the table is Ms Elliot Spears from the department of legislation and research at the law society. So you have two lay benchers speaking to you one after the other.

I propose first to deal with matters that I call context, then with matters that I would refer to as dealing with the public interest and, finally, with a specific amendment about the appointment of the complaints resolution commissioner.

These amendments speak to an act which empowers a body made up of lawyers to govern lawyers in Ontario. This is not an act empowering florists or journalists or engineers or taxi drivers to govern lawyers, and there are two matters which follow from that, that very self-evident fact that I ask you all to keep in mind as you consider the amendments and submissions that you're going to be receiving over the next couple of days.

Firstly, those being governed are the lawyers of Ontario. They are not mindless, uneducated, illiterate people who can't help themselves. They are persons who have been trained in law. They are people who have acquired skills in handling matters of law. So while it is true that as citizens they must be protected from any overreaching arbitrary action by their governing body, the benchers in convocation, nevertheless when you are looking at these amendments, I ask you to weigh in the balance the skills and knowledge which these lawyer members of the law society have in their dealings with their governing body against the lack of legal skills and knowledge that most members of the public have when they deal with their lawyers.

I think you'll all agree with me that the emphasis which we have to place in these amendments has got to be in protecting those least able to protect themselves; namely, members of the general public in their interactions with lawyers. I hope that therefore you will agree to the amendments which give the law society the power to be proactive in preventing harm to members of the public. I'm speaking, for instance, of the right which these

amendments will give the law society to investigate matters of professional competence.

The second side of the context issue is that the governors themselves are lawyers, by and large. There are going to be more lay benchers, but you're speaking of 40 lawyer benchers and eight non-lawyer benchers. As such, they come to their duties as benchers with a perfectly normal in-built bias. We're all biased in different ways by our professions, and they come to the job of governing the profession in the public interest with a bias which I would describe as being "There but for the grace of God go I."

In my experience, the benchers are not a body of people who are just dying to prosecute fellow lawyers. I've never heard benchers say: "Who are we going to prosecute tomorrow? Who can we investigate?" Their in-built bias, which is not evil or good or indifferent — it's simply a fact of humanity — is towards inertia.

Therefore, it seems to me that it is incumbent on you when you are considering these amendments to bear that in mind and to bear in mind that they are the people who are asking for these amendments. They are the people who are recognizing both within themselves in the in-built inertia of not wanting to act against their fellow professionals and the fact that they know that within any bench — and I have served as a benchner as a result of two benchner elections, so I have seen the composition of convocation change — and with any group of benchers, there are always going to be those who embrace the difficult job of governing in the public interest and those who have come literally to fight very, very local battles that have absolutely nothing to do with the public interest.

#### 1620

It seems to me that these amendments speak to you from those benchers, and convocation as a whole, who want to have a Law Society Act that forces them out of inertia and that forces them to do what we all require, which is to govern the profession in the public interest.

Why do we need to move beyond this inertia? We need these amendments because the public interest demands that lawyers provide honest, competent, efficient service to their clients. We need it because lawyers themselves, I'm sure, are sick and tired of being the butt of cynical comments about the behaviour of those who consistently let the profession down.

Here I'm not speaking about major acts of dishonesty, because believe me, those are dealt with. I'm speaking about those who, like the pernicious dripping of a tap, eat away at the integrity of their profession by providing sloppy, inefficient, incompetent, rude service to their clients. Ladies and gentlemen, the armoury of weapons which the law society currently has to deal with those lawyers is totally insufficient, and lawyers are just too important to the public good for the current situation to continue.

Members of the public have to turn to lawyers at times of the greatest crisis in their lives. It is to lawyers that members of the public must turn sometimes to defend themselves against you, the legislators. So they are just too important a body in the whole public format, the whole



society, for these amendments not to be given your approval. I think they are absolutely essential if we are to stop this cynical rot that exists by members of the public about a profession which the public desperately needs.

From 1992 until earlier this year, it was my privilege and duty to sit, as Ms Callwood did, as a complaints commissioner for the law society. I, like her, met with people who had complained about their lawyers and been told that the file would be closed, so they came for a meeting with me.

My experience mirrors that of Ms Callwood and my fellow lay benchers that the majority, and I would say over three quarters of the files that I dealt with, dealt with shoddy service, letters unanswered, telephone calls not returned, arrogance, lawyers not following their clients' instructions and rudeness. Most of the time, as with Ms Callwood, I had to close the file, not because the lawyer had given good service and not because the complaint was frivolous, but because the law society lacked the tools with which they could deal with those sorts of deficiencies. They were able to deal with dishonesty because the rules of professional conduct covered that, but they could not deal with these particulars, and I'll give you some examples.

There were instances where it was fairly obvious that what the lawyer needed to do was to gain some assistance in how to run his practice. His legal skills might be fine; he just didn't know how to run an office. The law society actually has a program which does just that, so you'd think it was fairly easy. We could say to the lawyer, "You must go and take this particular course." But could we do that? No, because we lacked the powers. We could only invite the lawyer to take this course and, surprise, surprise, the lawyers who needed it most said, "Thank you very much but no." You land in a situation where because you lack the means of doing something about inefficiency, the in-built inertia which is in the body simply holds sway.

I'm simply delighted that these amendments, if they are passed, will allow the society to order that a lawyer participate in specific programs of professional training to improve his or her professional skills and I'm delighted that if that carrot doesn't work, the lawyer will be called on to refund all or a portion of the fees and disbursements paid to the lawyer by the client. I'm also wholeheartedly in support of setting up the office of a complaints resolution commissioner.

Therefore, I would like to leave the rest of my time free to deal with questions from you, but I would simply urge you to allow whom I call the good benchers, that is, the benchers who have embraced the difficult job of governing in the public interest, to do their job, remembering that there will always be benchers who haven't got the slightest interest in the public interest.

**The Chair:** Thank you very much for your presentation. That allows us three minutes per caucus and we begin with the third party.

**Mr Kormos:** I already told you, I'm inclined to support the bill.

**Ms Sealy:** Great.

**Mr Kormos:** You talked of a distinction between the two types of benchers.

**Ms Sealy:** That will always be.

**Mr Kormos:** Listen, I'm asking you straight, do you disagree with the bencher who brings regional issues, parochial issues to convocation?

**Ms Sealy:** I don't disagree with the bringing of parochial issues to convocation. Parochial issues can be very important. What I resent is when some benchers forget that the law society is not the trade union for lawyers. Most times the public interest is not in conflict with lawyers' interests, but there are times when there is a conflict and so what I resent is the times when some benchers fail to recognize that distinction. It's got nothing to do with regional or local.

**Mr Kormos:** OK. You have insights we don't. How does convocation respond? Obviously the antennae go up and people know what's going on. Right? How do the benchers respond when that starts happening?

**Ms Sealy:** I have been absolutely proud, by and large. It is as if by magic, but it's not by magic; it is by the advocacy of those benchers who truly appreciate that a profession can only be self-governing if it looks truly to the public interest and it is by their advocacy, it is by the shaming.

You all sit in an elected body; you know that of which I speak. There are always going to be the people who have a greater sense of the public good than others, and in my experience, those interested in the public good all have so far carried sway.

**Mr Kormos:** They do public opinion polls, they do surveys — they publish them — about public confidence, public trust in various professions. Do you know where lawyers end up? Lawyers end up very close — they share spots with politicians —

**Ms Sealy:** Or journalists.

**Mr Kormos:** Journalists too? OK. There you go. She said it, not me, guys. Is there any hope?

**Ms Sealy:** There is hope. My name is Hope, so I guess I can be forgiven. But I honestly believe that these amendments give the society an opportunity to start lifting the whole profile of the profession. I really do.

**The Chair:** We'll now move to the government members.

**Mr R. Gary Stewart (Peterborough):** I just got my question answered, to be honest with you, but it's my understanding that the lay benchers are appointed for four years and that you can have additional terms or can be reappointed.

**Ms Sealy:** Yes.

**Mr Stewart:** Ongoing or only for a two- or a three-year term?

**Ms Sealy:** My reading of the amendments and the act does not limit the amount of time that lay benchers can be reappointed, but you should know that I came in halfway through one term and then got reappointed for a full term. During the second period we had meetings with the minister and it was our suggestion that lay benchers not be appointed for more than two terms, and I'll tell you why. The whole thing can be very seductive. OK. You go in

there with the best of will, but after two terms it's very easy to have bought into an approach and a look, which means that you're not as critical as you might be and so our suggestion to the minister was that there be a cap after two terms. I have no way of knowing if the minister has considered it or decided on it, but it's certainly not part of the act.

**Mr Stewart:** We heard from Ms Callwood that when she became a lay benchner, there wasn't a great deal of orientation done. Do you feel the same way and do you think there should be more? I hate to say what I'm going to say, but I'll say it anyway, that sometimes lawyers, because of their ability of knowing the law, whether they are good lawyers or bad lawyers, I would suggest may try to intimidate lay benchners.

**Ms Sealy:** Nobody tried to intimidate me, and it's a good thing for them they didn't.

**Mr Stewart:** I was just making a statement.

**Ms Sealy:** But yes, I agree with Ms Callwood. The most important thing is to ensure that the lay benchers you appoint have the time to do the job. This is almost a full-time job. I was fortunate in the work that I was doing at the time it didn't matter when I did my proper work. I could do it at night, so I could do law society work in the day. The most important thing is to make sure that your lay benchner has the time to do the work that's there.

The second thing is, yes, there is need for better orientation. It needn't be extravagant. It can be just one day of being walked through the society, being walked through the processes, being walked through the building, for starters. You can get lost in there for years. There needs to be more work on that, but the time is the critical one.

**The Chair:** We now move to the official opposition.

**Ms Castrilli:** Let me say in response to the last question that I can't imagine two people who are less likely to be intimidated by anyone, including lawyers, than June Callwood and Hope Sealy.

It's been a long time since I've heard a spirited defence of the legal profession, and to hear it from a member of the public is extremely rare indeed. I thank you. You've been extremely articulate in your point of view and very forceful and direct and, like my colleague Peter Kormos, I agree with what you said.

I do have one question for you, though. The issue, as I said at the outset, is not about protecting crooked lawyers or shoddy lawyers or — I don't know how you define "arrogance." That may be a different concept for the public than it is for the lawyers doing work, but we're not trying to protect the lawyer who's not doing his or her job. The concern that has been voiced with respect to this legislation, though, is that in trying to deal with that problem, one may in fact be going too far and you're not entirely protecting the public interest.

The privacy commissioner, for instance, has said that the broad powers that are here infringe or could potentially infringe on the privilege and confidentiality that other members of the public, not related to the complaint, might have. I'd like to hear your comment on that because

it's really an issue of balance and how far you go to ensure that, yes, you maintain the highest standards for lawyers, but don't impact individuals who aren't connected.

**Ms Sealy:** You're speaking to the materials which the law society might see or might seek to see as it investigates a complaint, am I right?

**Ms Castrilli:** That's right.

**Ms Sealy:** Certainly in my time on the bench I have observed an extreme caution on the part of the law society that this is hallowed material and that this material cannot be used outside of certain limits. That's been my experience. Beyond that, it seems to me that it shouldn't be beyond the reach of the law society, working with the privacy commission, to develop some protocols because I think these protocols will simply enhance what I have seen happen myself, and that is an extreme awareness of the sensitivity of the material which, as the governors of the profession, they manage to see in their work in protecting other members of the public. I don't see it as a huge hurdle I guess is what I'm saying.

**Ms Castrilli:** That's a very good suggestion you make and I certainly would like to follow up on that. The courts have ruled that the privilege is the privilege of the client, not of the lawyers, and of course one of the issues you have with a bill that's as wide as this one is construed to be is that you may be trammelling on that privilege, that in fact you may involve people who haven't given their consent.

The person who makes the complaint clearly has given his or her consent because they want the case investigated, but in the course of that investigation you may impact on other people. I think your suggestion is extremely valuable, that there should be some attention given to the kind of protocol that could be developed to ensure that does not happen.

**The Chair:** Thank you very much for coming forward today. We very much appreciate that.

With that, we call our next presenters, Canada Law Book, CCH and Carswell. If you could identify yourselves for Hansard, we would appreciate it.

**Mr Stuart Morrison:** I am Stuart Morrison with Canada Law Book. We have someone making an official presentation but we were advised that we would start at 4:40. I don't see anyone here from Carswell yet.

**The Chair:** We can take a five-minute recess.

*The committee recessed from 1635 to 1642.*

CANADA LAW BOOK INC

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PROFESSIONAL PUBLISHING

**The Chair:** We call our next presenters forward, the representatives of Canada Law Book, CCH and Carswell. If you could identify yourselves for Hansard, we would appreciate it.



**Ms GERALYN CHRISTMAS:** Good afternoon. I'm GERALYN Christmas from Canada Law Book. Stuart Morrison is from Canada Law Book, Terry Hemingway is from CCH Canadian and Rachel Francis is from Carswell Thomson Professional Publishing.

We're here with one of the more obscure issues, I'm sure. We're concerned about a single amendment to the Law Society Act. To give you a brief background on ourselves, the three companies we represent are among the largest legal publishers in Canada. We are all headquartered in Ontario. We sell value-added legal information to the legal profession. The legal profession is our primary market.

One of the more substantial parts of our business is reporting the decisions from the courts of the country, and of course the courts of Ontario are a very important and large element of what we report.

We have been doing this for up to 100 years. This is a publication, *Canadian Criminal Cases*, which is celebrating its 100th anniversary of supplying criminal legal case law information to the legal profession.

Section 63 of the current Law Society Act has a provision in paragraph 5, and I'll read it for you:

"Subject to the approval of the Lieutenant Governor in Council, convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 62 and, without limiting the generality of the foregoing,...

"5. respecting the reporting and publication of the decisions of the courts."

Regulation 708 made pursuant to that states in paragraph 22: "The libraries and reporting committee may make provision for the distribution of copies of reasons for judgment on such terms as the committee may from time to time determine."

With the amending provision which moves the substance of that section into section 62, "Convocation may make bylaws,...

"12. respecting the reporting and publication of the decisions of the courts."

It may be that this effects no real change. We have been told by representatives of the law society that it does not. However, we have some concerns in the context of the relationship that currently exists between legal publishers and the law society.

The law society has taken a public position that copyright in the decisions of the courts of Ontario is the property of the crown in right of Ontario, and that by virtue of the existing section 63, that copyright flows or has been delegated to the law society.

We fear that with the law society, if it's given unfettered authority over this element of our business, there may be some restriction on our access to the decisions of the courts of Ontario so that we can conduct the business we're in.

So our suggestion is that the degree of political control that currently exists be retained and that the power over reporting and publishing of the decisions of the courts of

Ontario continue to be subject to the approval of the Lieutenant Governor in Council.

I or my colleagues would be glad to answer any questions.

**The Chair:** Thank you. That allows us five minutes per caucus. We begin with the government members.

**Mr Bob Wood:** I actually thought your presentation was very clear and don't really have much in the way of questions. Your concern is that some of your group might not have full access to the court decisions?

**Ms Christmas:** We have a concern that there may be some efforts to restrict access to the decisions of the courts of Ontario, or perhaps to create a monopoly on the supply of them, and we would be a victim of the pricing mechanism the agency would set in place. Right now we have liberal access and I think everybody benefits, including the lawyers of Ontario and the public, as a result. We are concerned that that continue.

**Mr Bob Wood:** I gather you've received assurances from the law society that there's going to be no change on the question of access.

**Ms Christmas:** Yes, we have.

**Mr Bob Wood:** But not written.

**Ms Christmas:** But it isn't in writing. Political stands change and it is a political stand.

**Mr Bob Wood:** Those are my questions.

1650

**The Chair:** We'll move to the official opposition.

**Ms Castrilli:** Thanks very much for coming. I'm going to leave the questions about cigar and cognac to my colleague Peter Kormos, who I'm sure is going to want to delve into that.

Let me say first off that I don't think your point is obscure at all. It seems to me you made it very clear. I'd like to ask a couple of questions. You've had some dealings with the law society over this act. Is that what I'm understanding? You've talked about this?

**Mr Morrison:** I've had some discussions, but very brief, on this particular amendment.

**Ms Castrilli:** Their interpretation is different from yours. Is that what I understand?

**Mr Morrison:** No, it was subsequent to a letter of inquiry I made to the Attorney General asking for clarification in writing of the purpose, and I received a call from the treasurer of the law society advising that there was no cause for concern and that the status quo was expected to continue as far as access is concerned.

**Ms Castrilli:** What evidence do you have that this wouldn't be the case?

**Mr Morrison:** We have none at all. It's just a concern on our part because the legal information industry is somewhat fractious at the moment. We are in the process of a trial, a lawsuit with the law society. Our concern was about the future. We've got no indication that things would change.

**Ms Christmas:** I think we should be aware that in the context of the lawsuit that's underway and should be concluding this week, the law society has basically stated in its pleadings that we should not have a copyright

interest in anything we publish. They have also made representations at various times to various government entities, primarily federal, stating that the control of law reporting in Ontario should be in the law society. I have appended one of their representations to the document that I have provided to you here today.

**Ms Castrilli:** It's your position then, on the basis of your understanding of this legislation and the position that's been put forward by the law society in this lawsuit, that the removal of Lieutenant Governor in Council approval in this legislation might lead to the law society restricting your ability to publish. Is that the gist of your —

**Ms Christmas:** It leaves their authority unfettered, I think. That's where we have some concerns. I think that as long as there's some degree of political government control, at least we have a road of appeal if there were anything carried out that would hinder us in conducting our business.

**Ms Castrilli:** Just to be clear, what you're saying is that you prefer the section to remain as it is and that would address your concerns.

**Ms Christmas:** I think that would address our concerns, yes.

**Ms Castrilli:** Could you tell us a little about your industry?

**Ms Christmas:** Yes, I will. The companies you see before us, as I say, are the largest, but the industry as a whole comprises other legal publishers. We employ approximately 1,500 people across the country, with the greater number of those in Ontario because that's where we're all headquartered. A lot of us are privately held companies, but it's estimated that our revenue is in the vicinity of \$150 million a year.

We publish in every format, paper, Internet, CD-Rom, on-line. We publish legal information for lawyers across the country in virtually any format you can name. We have been doing for a long time — Canada Law Book traces its history back to 1855 when it published the Upper Canada Law Journal. Our competitors here have equally lengthy histories.

**Ms Castrilli:** So there's a lot at stake.

**Ms Christmas:** There's a lot at stake. Case law is one of the foundations of all the information we publish.

**The Chair:** We now move to the third party.

**Mr Kormos:** We haven't got a lot of time. You're talking about case law, right?

**Ms Christmas:** Correct.

**Mr Kormos:** What's the status quo? I'm not really clear on that yet.

**Ms Christmas:** The status quo is that we are supplied with judicial decisions as issued by the courts, as they are issued, without any hindrance at all.

**Mr Kormos:** So each of the publishers gets the same reports.

**Ms Christmas:** We get copies of judgments the way the courts file them. We get the raw decisions. We add value to them and publish them.

**Mr Kormos:** Quite right. But I still don't — because I know some of these. I'm familiar with some of these. I see them from time to time. We've got the ORs and so on, but the private publishers get the reports sent to them by the courts?

**Ms Christmas:** Yes, the raw judicial decisions are sent to us by the courts.

**Mr Kormos:** Each publisher gets the same reports?

**Ms Christmas:** That's correct. If we choose, yes.

**Mr Kormos:** What do you mean if you choose?

**Ms Christmas:** If we didn't want them, we wouldn't get them, but we all currently get them, yes.

**Mr Kormos:** You pay for them.

**Ms Christmas:** We pay whatever the courts ask. In Ontario they do not ask us to pay. However, in other jurisdictions they do and we pay.

**Mr Kormos:** Then you make decisions about which ones you're going to publish in your monthly or bi-weekly —

**Ms Christmas:** Weekly.

We select among them. We retain expert editors, whether they be academics or practitioners, who select among those decisions which ones should be published. We add value in terms of classification, head notes, various other types of information of use to lawyers and we publish them.

**Mr Kormos:** You cross-reference them, stuff like that.

**Ms Christmas:** Absolutely, yes.

**Mr Kormos:** OK, but I don't know anything about this business. The current regulation says, "The libraries and reporting committee may make provision for the distribution of copies of reasons for judgment...."

**Ms Christmas:** Yes.

**Mr Kormos:** That's what prevails now and it's under that prevailing regulation that there's the distribution —

**Ms Christmas:** Nobody has used that. The distribution currently is directly from the courts. There has been no hindrance using that provision up to now. The libraries and reporting committee, which I guess doesn't exist by that name any longer — the law society publishes the Ontario Reports. It's their series of reports.

**Mr Kormos:** Quite right.

**Ms Christmas:** The publishers have a series of privately published reports.

**Mr Kormos:** I suppose the good thing about reports is that it means there are unreported decisions, which are the ace in the hole, right? That's when the defence lawyer stands up and says, "But I have this unreported decision."

**Ms Christmas:** There is almost nothing that isn't published because of course there are various services that provide all that material on-line.

**Mr Kormos:** What I'm trying to understand is you're fearful the law society is going to — if I can take a look at the subsection here with respect to the reporting of publication of the decisions of the courts. I don't know what the courts have to say. Are the courts going to suggest to the law society to tell them who they're going to send transcripts out to?



**Mr Morrison:** We've had no problems in our dealings with the law society on this issue whatsoever. Each of the companies and the law society publishes as it sees fit. Our concern is based on two things: (1) the move to change the existing regulatory structure, and (2) the fractious nature of the relationship between the law society and the committee of legal publishers as of today's date. That's it. Otherwise, we've been carrying on business as always. Our concern is that something suddenly will change.

**Mr Kormos:** You are Mr Morrison.

**Mr Morrison:** I am indeed.

**Mr Kormos:** You're the guy with the cigars and the cognac and Charlie Harnick.

**Mr Morrison:** Yes.

**Mr Kormos:** Boy, oh boy, is there a story there beyond what I tried to infer by way of cheap shots?

**Mr Morrison:** No story whatsoever.

**Mr Kormos:** I'll take your word for it for the moment.

**The Chair:** Thank you very much for coming forward today. We very much appreciate that.

**Mr Kormos:** To the parliamentary assistant, I've got to tell you I'm still unclear about the status of things in terms of the current regulation appearing to give the law society power to control the distribution of copies of reasons for judgment — that's what the publishers refer to in their submission — and the non-utilization of that power. The government obviously has addressed that, in its own mind at least. Chair, I'm wondering if the parliamentary assistant, if they solicited comments from legislative counsel commenting on this, indicating whether the concerns of the publishers are valid or not and if we could have those.

**Mr Martiniuk:** I'll report to you on that, Mr Kormos.

#### LAW SOCIETY OF UPPER CANADA, COMPLAINTS

**The Chair:** We would call upon our next presenter, the Law Society of Upper Canada, complaints, Mr Scott Kerr. Thank you for coming.

**Mr Scott Kerr:** Thank you, Chair. My name is Scott Kerr. I was the manager of the law society's complaints department from 1989 until 1997. I currently lead a restructuring project which will see a major overhaul and improvement in the operations of the law society's regulatory division.

I'm going to speak on two fairly narrow points. There will be law society speakers who will speak to a much broader range of issues over the next few days.

The first point I want to speak to briefly is the process of how the legislative amendments evolved at the law society and the role the public interest played in that process. Secondly, the role the law society's current restructuring plan will play to ensure that the legislative reforms, once implemented, will reinforce the law society's responsibility to govern and to continue to govern in the public interest.

As June Callwood's presentation indicated, the process by which the law society has come to this point has been

an arduous one, which began in 1989, when June Callwood's committee and another parallel committee were set up to review ways in which we could improve the way we provide our regulatory services to comply with our mandate to act in the public interest.

June was probably too modest in describing the importance of her committee's work and particularly the role she played in it. Its fundamental mandate was to develop a process that inspired the public's confidence in the law society's complaint handling process. We certainly think that, with the reforms that are before you now, we will be able to accomplish that.

#### 1700

It has long been recognized that a narrow, strictly disciplinary approach is not good enough to handle all the complaints we deal with, in particular a lot of the service- and competence-related complaints that some of the other speakers have already referred to.

Regulation today means more than just disbarring dishonest lawyers. We have to broaden the scope to deal with the complaints that deal with "shoddy" work, as June Callwood refers to it.

Addressing the problems of service and competence is equally important to our mandate today. The legacy of June's report speaks to that directly. One way in which that report intended to deal with the problem was to create an independent overseer and a third party broker of settlements. That is now reflected in the legislative package as the complaints resolution commissioner. That's one aspect of the package which has remained intact since 1989.

At the same time that the Callwood committee's work was ongoing, there was a second committee that was looking at various ways of improving our discipline process, which we've long realized was too cumbersome and took too long to deal with hearings. The reforms that you have before you now will streamline that process and enable us to conclude disciplinary matters faster. It also gives us powers to protect the public while those hearings are going on through the institution of things like interim suspension powers and the ability to seize the assets or to protect the assets of clients while a disciplinary hearing is ongoing.

We only have these powers to some extent or in an ad hoc fashion at this point in time. The legislation will clearly fill gaps which exist right now that we've long recognized we need to fill in order to act in the public interest.

Finally, the discipline reform committee also began looking at ways that we could build preventive and remedial aspects into our discipline process, so that rather than simply reprimanding lawyers and sending them back out to do the same things all over again to a new set of clients, we might also be able to provide them with the wherewithal and the means with which to avoid future complaints and to serve their clients better.

From there, further reforms have resulted in further additions to the legislation which make it a better, well-rounded piece of legislation and which responded to continuing changes and new expectations on the part of

the public about what a professional regulator should do. An example of that is mandatory peer review for our members.

You're probably familiar with quality assurance programs that are now a hallmark of all the health professions which have been enshrined in the legislation and which the government has approved over the past several years. The law society currently only has a voluntary peer review program simply because we lack the legislative power to require our members to participate in quality assurance programs. One of the important gaps that this legislation will fill is that it will finally give us the power to deal with competency problems in the profession head-on.

In summary, we've been working on this package since 1989. The process of refining has gone on ever since. The package has been in convocation on countless occasions, with the improvements being brought forward and approved in almost every case by convocation. At this point in time, it's a best-practices document in 1998. It provides us with the framework that enables us to act and adapt to the changing public expectations so that we can perform the type of role we've been mandated to perform.

The other point I want to touch on briefly is some aspects of the restructuring project, which is a wide-ranging and systematic attempt to modernize and put our organization on a footing where it can effectively implement and operate the new legislation. There are numerous aspects to this program which I won't bore you with, but certainly one of the key aspects of it is to build into the organization a service orientation in the sense that we're more responsive and adaptive to the needs of our client groups, one of the most important of which is the public. We've already begun the process of opening up regular consultations with the public and with our members as well to ensure that our services are responsive to their needs and expectations.

Many of the changes we've made to our organization structure and how we do some of the work, and how we're going to do some of the work under the legislative package, have been in response to the feedback we got. Certainly, one aspect of it is to be more flexible and versatile in how we deal with complaints. We have to recognize that we have a much broader regulatory scope under the legislative reform package.

It's not just the question of whether or not we have sufficient evidence to discipline a member any more. We have to consider other issues, especially ones which relate to competence and service issues, on a much more comprehensive basis than we have in the past. One way in which we hope to be able to do that is through the expanded use of alternative dispute resolution mechanisms, including the availability of third party mediation for parties in certain circumstances.

There is also an increased emphasis on remedial and preventive activities. A number of programs are being developed which will speak to some of those issues that June Callwood and Hope Sealy were referring to, where we would actually have programs in place which could assist lawyers with improving their office systems or

learning how to operate a trust account effectively, whatever needs are required in the circumstances.

We're also streamlining our organization structure so that it makes more sense to external users and makes our resources and services more accessible.

We're also using technology more effectively to improve access to the information services that we provide.

The sum total of all these changes on the restructuring end is to make sure that when the legislation is approved, the organization is ready to implement it in an effective way so that the public will see almost immediate benefits in terms of how the law society is able to now take on the expanded role that the legislation provides for it.

**The Chair:** Thank you very much. That allows us approximately three and a half minutes per caucus. We begin with the official opposition.

**Ms Castrilli:** Thank you very much. Could you tell me a little bit about your office: how complaints are initiated, how many complaints you would have in a year, what the disposition of those complaints might be in any given year.

**Mr Kerr:** The number of complaints has varied quite a bit over the years. It peaked in about 1993 at nearly 6,000 complaints. Last year, the number was around 4,500. As a general rule, between 5% and 10% of those complaints result in disciplinary action being taken against the lawyer. The remaining complaints for the most part are closed. In every case, the complainant is part of the process in the sense that if a member of the public makes a complaint, they're provided with any information we receive from the lawyer and we are required to provide them with a response explaining our position at the end of the day, particularly if we're going to close the file without taking any action against the lawyer. In that type of situation, complainants have the opportunity to seek a review of the complaint by a lay bench. I think that process has been explained to you before.

That's how the process works now. There had been some modifications to it over the years which have streamed certain complaints into dispute resolution processes, which have been quite effective in about 20% of the cases. We also have more intensive investigative operations which are responsible for conducting audits in members' law practices. We also have a voluntary peer review program which is up and running, and if we can obtain the members' consent, they do very intensive work with lawyers in terms of trying to upgrade their practice methods and so on.

That's pretty much the regulatory framework as it currently exists.

**Ms Castrilli:** I have a lot of people who come to my constituency office and complain against lawyers. The fact that I'm a lawyer makes them think that somehow I can mitigate. Is it every complaint that results in an investigation?

1710

**Mr Kerr:** No. There are numerous complaints that we receive which we don't have the jurisdiction to investigate in any case. One example of that would be a complaint which deals exclusively with the fee that a member has



charged the client. Under the Solicitors Act, it's the courts of Ontario rather than the law society that have to deal with fee disputes.

**Ms Castrilli:** Aside from jurisdiction, what criteria do you use before you would investigate? I hear a lot of what appear to me to be frivolous complaints.

**Mr Kerr:** It's a pretty low threshold. Because of our mandate to act in the public interest, we try to take seriously at least the concerns the party has even if we don't think they are concerns that will result in disciplinary action. There aren't very many cases where we would want to simply close a file without getting the lawyer's response in any event.

**The Chair:** We move to the third party.

**Mr Kormos:** People here today have been very interesting — Ms Callwood and Ms Sealy. Ms Callwood said that in her opinion there wasn't a single complaint — I hope I've got this right — that she reviewed wherein she indicated there wasn't a problem, at least, where something had gone sour.

I've already mentioned my constituency office down in Welland. Most of the time it's lawyers who will empty a client's bank account and say, "Sorry, I can't carry the matter on any further." It happens so often in matrimonial cases. I really get ticked off about those people, because they say, "Sorry, I can't act for you any more," and inevitably it's a woman who has come in who is left hung to dry — but also the non-responsive lawyers, the ones who don't call.

What I do is I think a very discreet practice of writing a letter to the lawyer saying: "Ms or Mr So-and-so was in to see me today. I've assured them that you're doing everything you can. However, they would like a phone call." I've done it; been there, done that. Usually lawyers don't like me doing that because they don't like their clients talking, right? The last one — she just wrote me a letter — dumped all over her and threatened her. He said, "Don't you ever — " So this guy, I figure: "That's right. We'll take care of him."

What about the alienation that people feel from the complaints process? I've talked to Ms Callwood about it and I've talked to others and I've really got a concern about that. Again, I'm talking about folks down where I'm from, but I think it's the same as everywhere else. Ms Callwood talked about ethnic people, non-English-speaking people, people who don't have the education you've got, people who don't even feel comfortable. What is going to happen to accommodate those people a little better, in a way that they're not intimidated or scared off or so they don't think they're David taking on Goliath and haven't got a snowball's chance in hell? What's going to change? What's going to happen to accommodate them?

**Mr Kerr:** That's a very good point. I think one of the efforts of the restructuring in particular is to move a lot more of our capable resources up front in the process. Historically, we've had a lot of clerical staff at the front end of our process to open the complaint. If someone would call in for the first time with a complaint, it would be somebody who really wasn't equipped, nor did they

have the authority, to make decisions about whether the case was going to go further or to assist the party in making their complaint and so on.

One of the improvements we hope to make is to put a lot more highly skilled people with more authority right on the front lines, right on the phones and right in the first office contact area. So if people come into the law society or if they're making telephone calls, there will be people there who will be equipped from a skill standpoint, but also they'll have the authority to open files, to assist people with their complaints and so on.

I agree with you that that is one of the more frustrating parts. It's a barrier at the start of the process that we have to address.

**Mr Kormos:** What about assistance to these people in terms of even presenting their case, understanding if they're going to have a credible allegation? Is that the right way of putting it?

**Mr Kerr:** Yes.

**Mr Kormos:** Nothing wrong with that, eh? — a credible allegation. What kind of material have they got to put together? My impression is that they're not getting much assistance, if any, in that regard now. Is that going to change?

**Mr Kerr:** We're always open to ways in which we can change the process. What we're trying to do now is make an attempt to improve the process. I think we have to be careful about recognizing what our role is. We're not an advocate for individual complainants, nor are we advocates for lawyers or trying to protect lawyers. Our job is to act in the public interest, and that means we have to take a certain amount of responsibility for that complaint ourselves and develop that complaint according to what we believe are the standards and the interests of the public to make sure that the public is being properly protected in that situation.

**The Chair:** Thank you very much.

**Mr Kormos:** This is really important, Chair. Lawyers may need —

**The Chair:** No, Mr Kormos. We now move to the government members.

**Mr Stewart:** There's a very important question I'd like to ask on my time, Mr Kormos.

**Mr Kormos:** Go ahead.

**Mr Stewart:** How many complaints would go through in a year? I'm not talking about the ones that are dealt with, but how many complaints would there be a year?

**Mr Kerr:** In 1997 for the calendar year, there were about 4,500 complaints.

**Mr Stewart:** What percentage of those would be dealt with and what percentage of those would actually have some action taken?

**Mr Kerr:** Between about 5% and 10% of those would result in disciplinary action of some kind or other against the lawyer.

**Mr Stewart:** One of the perceptions out there in the public is, "Why would I take my complaint to them, because they are protecting their own?" It's not only in

your association or society; it's in a lot of them. How do we get away from that? Do you think that exists?

**Mr Kerr:** One of the problems we've had with the system, and it's something that June Callwood alluded to as well, is the fact that in the current legislation we don't have any means by which to deal with service and competency problems. The legislation speaks to professional misconduct as the basis for the law society taking action against lawyers. "Misconduct" is interpreted to mean dishonesty, dishonourable conduct, things like stealing money from your clients and stuff like that. I think historically the law society does a very good job of dealing with those types of cases.

The difficulty is that the legislation is silent on what powers the law society might have to deal with service complaints: the lawyer who doesn't return the telephone calls; who takes too long to complete the case; who is rude or arrogant to their client. We got lots of complaints like that. There is some merit to those complaints but there is nothing in the legislation that empowers us to do much about it. That's why I think to a certain extent such a small percentage of the cases we deal with result in discipline or any kind of further action.

**Mr Stewart:** I guess that was leading to a question I had: What complaints are not covered under the present legislation that should be? You talked about fees. I was also hearing you say a few minutes ago, and I kind of shook my head a bit, that many lawyers should be taught or should get some type of assistance in how they operate a trust account. Does the word "trust" account not suggest what you should do without having a great deal of education in how to operate it? I'm being a bit facetious, but I'm not being facetious either.

**Mr Kerr:** Many lawyers are excellent lawyers. They're great in the courtroom but they're not accountants, they're not good bookkeepers and they're not good office managers. They're just not inclined that way, they don't spend a lot of time at it and that end of their business suffers. A lot of times we have to end up going in and cleaning up the mess.

**Mr Stewart:** What should be covered, then, under present legislation that isn't, the two or three most important things?

**Mr Kerr:** There is a whole new competency scheme in the new legislative package which will give us a lot of tools not only to fill that gap but also to assist lawyers as well so they can provide better services to their clients, so they stop getting complained about and their clients get better service. I think the new legislation speaks directly to that and then it's incumbent upon us to put into place the internal structures which support the legislation.

**The Chair:** Thank you for coming forward today. We very much appreciate your presentation.

#### MENTAL HEALTH LEGAL COMMITTEE

**The Chair:** We would call upon our next presenter. If the representative or representatives of the Mental Health Legal Committee could come forward and identify

yourselves for Hansard, we would appreciate it. Thank you for coming. You may begin.

**Ms Anita Szigeti:** Good afternoon, Chair. My name is Anita Szigeti. I'm a lawyer in private practice. I also chair a committee of lawyers known as the Mental Health Legal Committee. We're an organization of lawyers and community legal workers who advance and protect the rights of persons with mental illnesses.

I am appearing here today to talk about a very specific aspect of the legislation that is proposed, Bill 53, a very small portion of the legislation but a significant one for lawyers who are persons with mental illnesses.

#### 1720

Our committee has become concerned about specific provisions that are in sections 35, 39, 40 and 44 of Bill 53, which are the powers given to the law society on discipline matters to make certain conduct orders, capacity applications, capacity orders and professional competence orders. You may have already heard about these things earlier today and I apologize if I repeat any ground.

Our specific concerns regarding members who may be incapacitated: Our first concern is that under the proposed bill the law society's hearing panel could order a member to undergo a medical or psychological examination and that order would not be preceded by requirements to make inquiries, nor should the panel be required to have reasonable and probable grounds that the member is incapacitated before those examinations are ordered. This is in sharp contrast to other regulatory professional acts such as the Regulated Health Professions Act, which requires reasonable and probable grounds before these types of examinations are made.

There are a number of other concerns about the way incapacity is determined under subsections 37(3) and (4) of Bill 53; specifically, putting a presumption of incapacity on a member who's been found to be incapacitated for purposes of another act. I've produced some written submissions that are lengthy, rather dull, but I refer you to those.

Our main concern about Bill 53 is the power of the law society to make certain so-called treatment orders in the case of members who are either guilty of misconduct, incapacitated or professionally found to be incompetent based on a mental disability. Our specific concern is that disability and mental illness.

Treatment orders, for your information, are an extraordinary power and they're not seen anywhere else in Canadian law but for one exception. The only place anyone can order treatment is under the Criminal Code in the case of an unfit accused, and that is a very small number of occurrences. Our provincial mental health legislation and consent and capacity legislation nowhere authorize a provincial tribunal to make treatment orders of a person, and basic rights to make treatment decisions for ourselves are based in our Constitution, specifically in section 7 of our Constitution.

What the Mental Health Legal Committee is basically saying is that, yes, the law society has not only the right but the obligation to protect the public interest and it



should do so by requiring its members to be fully capacitated and competent to practise. It can contract with the member for a specific outcome, but it should not have legal entitlement to order the means to get there.

There are a number of good reasons for making this argument because ordering a certain treatment by no means satisfies the society that the member is either competent or capable to practise. You can be misdiagnosed with a mental illness, you can be prescribed the wrong medication. Under the regime proposed by Bill 53, you can be ordered to take a certain medication and then go away and be free to practise. But that's really not the concern. The concern is, are you capable, are you competent?

We're suggesting that it's not legal, not constitutional and not right for the law society to have these invasive powers, these intrusive powers to order a treatment that's specifically perhaps medication, and further also to order the member to authorize disclosure by a health care provider, to report on the so-called compliance of the member to the law society. We think these are unjustifiable infringements on the basic privacy rights and life, liberty, security of the person rights and perhaps equality rights of members of the law society.

There's a lot more I could say but I think I'll leave it at that and just invite questions. I'm happy to respond to anything that may arise from that.

**The Acting Chair (Mr R. Gary Stewart):** We have approximately five minutes per caucus, starting with the third party.

**Mr Kormos:** I've got some strong sympathy for the point you make. I think this part of the bill stood out to a whole lot of people because of its novelty in terms of being primarily a new element. How would you propose that a bill deal with protecting the client from a bona fide incapacitated lawyer, a real, honest-to-goodness incapacitated lawyer? I'm not engaging you in argument. I don't know.

**Ms Szigeti:** If you look at the written submissions we've made, we propose that what happens under the Regulated Health Professions Act, for example, is a good way of going about it, so that if someone's incapacity comes to your attention, you make some inquiries, and it's only when you have reasonable and probable grounds to believe there is incapacity that you then hold a hearing. That's the first step.

In addition, appeal rights are important. We, as lawyers, would also be a lot more comfortable appearing before these tribunals if we had a legislated right of appeal such as in the Regulated Health Professions Act, so that if the hearing panel makes a mistake at least we know if there's a problem, an error of fact or law, we can go and appeal that.

The public should be protected from lawyers who are incapacitated. We agree with that and we think all the society needs to do after it makes a determination that the member is incapacitated is say: "You don't have the right to practise right now. Get yourself together. Do whatever and come back to us and let us know when you're capable

to practise law again. That's when we'll let you go for it again."

But what the society is proposing to do in those specific subsections is say, for example: "You must go and see your psychiatrist twice a week and take a particular antipsychotic," if your diagnosis is of a psychotic nature, "and then, if you continue to do that and you authorize your doctor to come and tell us that you're complying with that order, you can go ahead and practise."

We think this, first of all, doesn't accomplish the public interest being protected, just because someone's popping their pill. For a large percentage of these folks, that's not going to help in any way.

You're failing to protect the public interest if that's all you do and you're unduly invading the individual member's right to make their own treatment decisions. How I get well is my business, but the law society has the right and the entitlement and in fact the duty to make sure I'm well to practise. I need to satisfy them that I'm well to practise, but they don't get to ask me what I'm taking and when and they don't get to force me to call my doctor up to satisfy them that I am taking my medication.

Is that helpful?

**Mr Kormos:** Yes. We won't hear from the law society again until tomorrow. One of the problems with this type of hearing is that they don't get a chance to respond to you here and now. I'd like to hear what the law society says about that.

You talk about safeguards.

**Ms Szigeti:** Yes.

**Mr Kormos:** At the end of the day, you understand why I'm sympathetic to the bill.

**Ms Szigeti:** No.

**Mr Kormos:** Across the board.

**Ms Szigeti:** Oh, yes, but on this particular issue I —

**Mr Kormos:** So what do I do with respect to the bill vis-à-vis this issue if the government doesn't amend it?

**Ms Szigeti:** In the committee's view, those particular sections that make treatment orders, which are unprecedented powers and not seen any place else, as I say, would have to come out. I don't know how to advise you about what to do, but this is the kind of thing, if it's passed through, that's going to be the subject of constitutional litigation, which would make our committee members very happy, as it'll give us something to do. On the other hand, to the extent that our members are subject to this kind of coercive treatment order scheme, we're not going to be very happy. Those are some of your choices.

**Mr Kormos:** I suppose one of the arguments that might be made would be that it's not really coercive because the person can choose not to comply with the direction.

**Ms Szigeti:** Right, but what I'm suggesting to you is the direction could be entirely misguided and it's based on a certain faith in what the doctor says will improve you rather than in looking at the functional outcome. They could be forced to take medication that's harmful and not helpful for the stated purpose of protecting the public interest.

**Mr Martiniuk:** This is a most inventive argument. When we're dealing with rights, that's one thing. Although I practised law for 30 years — I no longer practise law — I always thought the practice of law was a privilege I enjoyed and not a right. There are many individuals in our society who do not practise law and they choose not to. The distinction between a privilege and a right is paramount. It's an honour to practise law; it's also a privilege.

1730

You have taken the criminal law and your reasonable and probable grounds and you have made the practice of law a right. You talk about a lawyer being coerced into a treatment; he has a choice at all times. He can choose to continue the privilege of practising law in this province or walking away from the practice of law, which many lawyers do today. They do not take up the privilege. Please explain to me how you have made privilege into a right under the Charter of Rights.

**Ms Szigeti:** Thank you for your comments. What is not a privilege is the right to decide what medication you put in your body and what you don't. That's a constitutional right that's protected, as I'm sure you know, by section 7 of the charter. I'm not suggesting that practising law is a right. Actually, I'm not sure it's a privilege on certain days of my practise either. But I take your distinction.

The law society has the right and the obligation not to allow the privilege, as you say, of practising law to be conferred on incapable or incompetent members. You and I are in agreement about that. All I'm suggesting is that the society needs to ensure that the member is capable and competent before they allow that person to continue practising. During a period of incapacity or incompetence the person should be suspended. It's up to the person how they get back to the point of capacity or competence. That's all I'm saying.

What is everybody's individual, private right is to decide how we're going to treat ourselves to get well enough to exercise the privilege of our profession. That's all.

**Mr Martiniuk:** But this is very important because the alternative — and you've said it. What we're going to do is suspend a lawyer rather than treating that lawyer under guidance, where he could earn a living, and he may not wish to be suspended for six months or a year until we can see some permanent effects of the treatment. He may prefer, or she may prefer, to receive a course of treatment so that he could continue making a livelihood. That's a pretty bleak picture you've painted for us here for lawyers. You put me out of business because the results of a particular treatment may not appear for a number of months or possibly years.

**Ms Szigeti:** Is the bill then suggesting that while the treatment that's been ordered is underway, that may be or may be not taking effect, that member ought to be practising? Because in my view, then, it's not protecting the public interest.

**Mr Martiniuk:** The bill would not say that. That would be a matter for the law society when they lay down

conditions. As I understand it, the idea is to give the law society the most flexible terms possible so they can deal with lawyers with some kindness, in addition to penalizing them. I thought that was the scheme.

**Ms Szigeti:** I understand it's presented as if it's going to be a less intrusive method of dealing with complaints. However, in my view, that's just not the case because you're not going to continue the entitlement, the privilege, to practise while medication is being experimented with to see how you're doing. Ultimately, the public interest is only protected if you're both capacitated and competent to practise. We're all in agreement that needs to be the case.

All the committee is concerned about is that a tribunal's going to have these unprecedented powers to order you into treatment and to order you to authorize your doctor to come and tell the society that, yes, you are duly popping those pills, yes, you're attending, yes, you're taking everything you should. In our submission, that in itself is not going to protect the public. The law society is not a doctor; you don't know what's going on. Anything else?

**Ms Castrilli:** Thank you, Ms Szegeti. You've certainly been very clear. This is one of those incidences where I really regret that we don't have more time. Five minutes to ask questions, since you will be the only presenter to speak on this issue, is really not enough.

I'm going to raise three issues with you and I hope we can deal with all of them relatively briefly, and perhaps, if more time is required, I can speak to you after.

People around here will tell you that I'm a passionate advocate for the charter, but I have to ask you, do you really think that section 7 of the charter is absolute and do you really think there are no limits that can be placed on the charter in these particular situations?

**Ms Szigeti:** As you know, the rest of the sentence in section 7 is you have the right to life, liberty and security of the person, to be deprived thereof only in accordance with the principles of fundamental justice.

I guess, if I'd had more time to write my paper, I would have expounded for you on why I think the mechanism that's proposed in Bill 53 is not in accordance with a process that is fundamental justice.

**Ms Castrilli:** We'd be interested in having some more information on that. Obviously, this isn't the forum, but if you could submit something to us, that would be helpful.

A corollary question to that is, having established that section 7 might apply, why shouldn't lawyers be held to higher standards? Lawyers act in the public interest. People will tell you that it's necessary to have lawyers particularly perform at a certain standard. Why would we not say that in this particular case it should be a higher standard?

**Ms Szigeti:** Members of the Mental Health Legal Committee would not object at all to the idea that lawyers need to be held to the highest standard where capacity and competence are concerned. We're in agreement with the stated purpose of the bill. We're in agreement that protecting the public interest is paramount.



What we're suggesting is that simply ordering a person into treatment — if you look at the language of the proposed legislation, it says the society should have the power to order us to do anything that might improve our health. I smoke; are they going to tell me not to? They could try, and I wish they were successful but —

**Ms Castrilli:** I suppose if they have enough benchers of that persuasion, they could. Is that your point?

**Ms Szigeti:** Yes. Pretty broad powers, you've got to be careful.

**Ms Castrilli:** We have very little time. I want to address two issues with you. One is the reverse onus that you talked about in your paper because I think that's important. I think you should explain to us how that differs from other situations.

**Ms Szigeti:** Subsection 37(3) suggests that in the absence of evidence to the contrary, a person shall be presumed to be incapacitated for purposes of this act, Bill 53, if the person has been found under any other act to be incapacitated within the meaning of that act.

In our written submission we explain that the legal construct as a test for capacity in provincial mental health legislation is very thinly sliced, so that under the Mental Health Act you could be found incapable of something as narrow, for example, as deciding to whom your psychiatric records should be disclosed. If that's the basis of your incapacity finding as a member, that doesn't translate into the incapacity to practise law. In capacity to make treatment decisions, you can be capable to decide if you need aspirin for a headache but not if you need a certain other kind of other medication; very task oriented. The only thing that unites capacity legislation elsewhere in the province is that the presumption is always of capacity. Somebody else has to rebut that presumption.

This particular provision would put the onus on the member to show that they're not incapacitated as long as there is any finding out there under any other act of their capacity.

**Ms Castrilli:** They're incapacitated unless they prove otherwise; that's your reading of the statute.

**Ms Szigeti:** That's my reading, and I could be wrong.

**Ms Castrilli:** You talk about subsection 39(1) and the hearings that take place under that section, which now seem to be very broad. Would you be satisfied with an amendment there that allowed for "reasonable grounds" of the hearing panel to indicate a certain treatment, or is it a question of they should under no circumstance be able to indicate there should be treatment?

**Ms Szigeti:** An examination? That section talks about the examination.

**Ms Castrilli:** Examination, that's right.

**Ms Szigeti:** I think that there are probably appropriate circumstances to order that the person undergo a medical or psychological examination. We would not oppose that as an idea. It exists in other professional regulatory legislation. Reasonable and probable grounds, though, is what we'd be looking for to conduct that.

**The Chair:** Thank you very much for coming forward today.

## LAWYERS FUND FOR CLIENT COMPENSATION

**The Chair:** We now call upon our last presenter of the day. If the representatives of the Lawyers Fund for Client Compensation could come forward and identify yourself Hansard, we would appreciate it. You may begin.

**Mr Clayton Ruby:** Thank you, Mr Chairman. My name is Clayton Ruby and I am the leader of the discussion the law society has on an ongoing basis, the Lawyers Fund for Client Compensation. That's a fancy name for the fund we maintain out of lawyers' money, only lawyers' money, to pay back the victims of dishonest lawyers who steal, the ordinary, little people, small business people, and we care very deeply about it.

It's one of the areas we do pretty well in. We have 28,000 and change members right now across this province. We maintain a fund which today stands at \$24 million to pay up to \$100,000 per claim with no limits. We're proud of that. I'm also proud of the fact that, at the moment, if you ask me how many lawyers there are outstanding claims about in this fund dealing with lawyers' dishonesty, the answer is 70, out of 28,000 and change. That's not bad.

1740

I suspect I'm also here because I've been an elected bencher for about 20 years now, so I've seen a lot change and a lot not change. I want to tell you, first of all, that you must distinguish between the law society on the one hand and the lawyers' advocacy groups on the other. To use Hope Sealy's wonderful phrase, "We are not a trade union." We have no mandate to protect lawyers or lawyers' incomes. The real question is, will this legislation help us better do our real job of governing in the public interest?

We're pretty good at some things. We're pretty good at tracking down after the fact people who have stolen money and prosecuting them and getting them out of the profession. We're pretty good at paying back their victims.

We're not so good at other things, and I think June's quite right about those. We're not good at resolving matters so that the public is satisfied and the member is fully satisfied and feels they've been handled properly, particularly when we're dealing with minor problems, when we're dealing with incompetency, when we're dealing with, yes, mental illness. Let me stop and say a bit about mental illness if I can.

First, it's a wonderful presentation and I respect the perspective tremendously. Let me point out to you that subsection 49.3(3), which is the commencing of a hearing on mental illness on competency grounds, requires reasonable grounds as a precondition. We think that's right, that there should be that reasonable grounds standard right at the beginning before you can start doing anything.

Second, I must say that I personally agree with the last presenter when she says, "There ought to be a right of

appeal," so think about that. There ought to be a right of appeal. There isn't one at the moment.

Overall, the right to practise, as was mentioned very clearly, is a privilege. This is not an attempt to be punitive. It's an attempt to be flexibly helpful, to try and say: "We've got to do more than we can do right now. Right now we can suspend you under section 35." It's a hammer. It's not a helpful hammer. This allows people to have other options and choices, but at the end it's much like the decision to fly in an airplane: If you don't want to fly in an airplane, you won't be personally searched. It's a big price to pay but it's necessary in the public interest.

Ms Castrilli has asked some questions and I want to deal with one point of them. In order to effectively regulate lawyers — and bear in mind, we're not the state, we're not somebody external; we're the regulating body — we have to have access to everything. If you look at the books alone, the records alone, the economic books, they may look fine on their face, until you see the file and then you realize, "Oh, my God, we've got a horrible problem." Or the records may be a mess and unintelligible until you see the files. Every regulatory body in the English-speaking world has to see that file, so the common law has developed a rule that when the regulatory body does that, it's bound by the same privilege the member had. That's true all across the world in English-speaking countries. That's the common law we believe in Canada, as it is in the United Kingdom, and we've always been bound by that. To my knowledge, we've never had a complaint of breaching that privilege once we've seen the records, and we have always done it.

The present language I believe sets that out. To me, it's clear; I hope it is to you as well. There is nothing new about that as a technique: Translators, social workers, psychiatrists who take part in the privilege process all wind up being bound by the privilege. It's a normal fact of legal life.

Last, a word about the publishers' submissions, if I may: First, the law society does not have presently have and, as I read this proposed amendment, will not have the power to tell the courts to whom they should send their reasons for judgment, let alone whether they should charge for them.

Second, I doubt if even this legislative body has the constitutional right to tell the court system to whom they should send their judgments. I think the separation of powers prevents that. I don't think anybody has the power.

Third, I want to make it absolutely clear that we have never sought to restrain in any way the access of publishers to reasons for judgment. Indeed, it would boggle my mind why the law society would want to do that. We have an interest in seeing that our members know the law and have access to the law by whatever method they want.

What that bylaw does is allow us to do what we have done from time immemorial: We have published the Ontario Reports, which are selected judgments of Ontario, and we distribute them free to our members through one of the publishers, Butterworths Canada. I don't understand the presentation on that very well, but I want to make

clear that we have never sought to in any way limit their access. I doubt that anyone constitutionally could or should.

If there are questions, you've been very patient with me.

**The Chair:** That affords approximately 12 minutes per caucus and we begin with the government members — sorry, four minutes per caucus, a total of 12 minutes.

**Mr Ruby:** I don't mind 12; I'm here.

**Mr Bob Wood:** I had a question about your comments on the submission of the publishers. Would you have a problem with putting in the statute a provision that said something along the lines of "consistent with full access by all to the decisions of the courts"?

**Mr Ruby:** To me, it would be redundant. I have no problem with it, of course not, but it would be redundant. I think everybody in this province, every citizen has got a right of access to the courts and to understand and get information about what the terms of the courts are. I think it's part of what we mean by democracy. I'm sure it's a charter right. If someone tried to infringe it on the part of the government, it would be stopped.

**Mr Bob Wood:** Would that be in any way inconsistent with what the law society proposes to do?

**Mr Ruby:** Not that I can see at the moment without having reflected on it. I can't see it.

**Mr Stewart:** I asked the previous presenter about the perception that the public has about going to this group on a complaint because you're "protecting your own." This is not me saying it; this is a perception that's out there. Do you think that the breakdown where they are now increasing the lay benchers to eight is enough? I use the word "intimidation," and certainly the two ladies I talked about — I'm quite sure you don't intimidate them, but in some way a lawyer's business is intimidation. I don't mean that disrespectfully. I guess what I'm trying to say is, are there enough lay benchers on to really do the job to protect the people?

**Mr Ruby:** Let me tell you the problem that no one has adverted to about this. One of the constitutional freedoms that we have in this country is the independence of the bar — you've heard the phrase — but in practical ramification what that means is that government cannot control the legal profession in its organized capacity. Every citizen is entitled to a lawyer who is not tied to government or controlled by government, so we set up an independent bar. At some point you have so many lay people appointed by the Attorney General that that independence is threatened. I think the number we have now does not threaten it. I would be concerned if you went too far. I don't think there's a magic number. We've experimented slowly with the rise from two to four to more now, and I think it's probably the right course to take, but I'd rather go slowly.

**Ms Castrilli:** I should say at the outset that the questions I've asked and the views I've expressed here are not my own. I've said from the outset that I have an open mind but that there are issues that have been raised that I'd like to raise.



I'm delighted that you're here at the close of this session, because we've heard a lot of things today. I want to put two questions to you. The first deals with what the law book publishers put forward, which is not a huge argument in the scheme of things — we're all quite disposed to support this legislation — but they made a point that I'd like to hear more information on. My question simply is: If the idea is to retain the ability of law book publishers to continue to do what they're doing, then why the change? Why do we see these amendments in the Law Society Amendment Act?

**Mr Ruby:** It isn't really a change. It's now a bylaw rather than a regulation, but other than that it is no change.

**Ms Castrilli:** I don't know. I asked the researcher to bring me a copy of the original legislation and it looks to me that there are sections that are being deleted and put in other places of the act. Even in a most generous interpretation, not even a legal interpretation, something's going on, wouldn't you say?

**Mr Ruby:** Just moving from a regulation to a bylaw, and that's all that's happening — zero.

**Ms Castrilli:** But you're eliminating — I don't want to quibble, but what they've said is substantiated here — the approval of the Lieutenant Governor in Council.

**Mr Ruby:** Because all we're asking for, all we've ever had, is the right to publish our own reports. We do not seek anything by way of refusing them access. We don't have the power to do it. If you gave us a regulation saying, "You can from now on regulate access to these publishers," it would be absolutely unconstitutional. We've never sought it, we don't want it, and that's why I fail to understand fundamentally what they're about.

**Ms Castrilli:** The point may be moot if the litigation speaks to this point later on. I'm not sure, but I hear what you're saying. There's obviously a difference of opinion.

**Mr Ruby:** The litigation's about copyright and public domain, and that's all I know about it, but it doesn't deal with this issue at all.

**Ms Castrilli:** All right. There's a difference of opinion here. I will explore it further with the law society, because you have a few other members who are coming forward.

The other question I really want to ask is about the mental health issue. That is important. I'm not entirely clear as to how you answer what has been put forward today. I understand what you're saying, that there have to be reasonable and probable grounds to begin with.

**Mr Ruby:** Right at the beginning.

**Ms Castrilli:** That clearly is not sufficient, and I suppose you'd be open to repeating "reasonable and prob-

able" in other sections in order to give comfort in that particular —

**Mr Ruby:** But then there's the second stage too, if you read it. I know you just got that paper and you haven't had a chance to spend time on it, but in order for anything to start there must be reasonable grounds. That's the first safeguard. Then in order for the committee to make any order as a precondition they must find, they must be satisfied that the person is incapacitated.

Today, that would be the end of it; we'd suspend them at that point. But now we're going to be able to say, "Instead of being suspended, you can do A, B, C or D. We've got a lot of flexibility here." It's purely designed to help, but it can only happen after they are satisfied that there really is an incapacity.

**Ms Castrilli:** In any event, some of the concern may go away if there's a right of appeal.

**Mr Ruby:** To me, it makes sense. I like the right of appeal.

**Ms Castrilli:** I'm glad to hear you voice that.

**The Chair:** Thank you very much. We now move to the third party. Mr Kormos.

**Mr Ruby:** I don't want to be cross-examined by Peter Kormos.

**Mr Kormos:** Well, I'm not going to.

I understand the issue with the publishing; I think I do. You're talking about enabling the law society to publish its ORs. I don't know; am I right?

**Mr Ruby:** That's what it looks like to me, as I read plain English.

**Mr Kormos:** Once again, it's interesting that you would comment on the matter of appeal rights to decisions. I don't know whether that's going to be repeated by way of submissions tomorrow from other representatives of the law society, but that's something where I hope the government is — it might even want to show its hand. Is the government considering those sorts of amendments?

**Mr Martiniuk:** We're considering all reasonable amendments. That's what these hearings are for, Peter. You know that.

**Mr Kormos:** Cut the crap, Gerry. These are rubber stamps and they have nothing to do with consulting the public. If you don't want to show your hand, fine.

Thank you very much, Mr Ruby. We'll see what the government does by way of rights of appeal.

**The Chair:** Thank you very much for coming forward today. At that, this committee rises until 1530 of the clock tomorrow.

*The committee adjourned at 1755.*





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Tuesday 8 December 1998

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## Standing committee on administration of justice

Law Society  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Tuesday 8 December 1998

Mardi 8 décembre 1998

*The committee met at 1532 in room 228.*

## LAW SOCIETY AMENDMENT ACT, 1998

LOI DE 1998 MODIFIANT  
LA LOI SUR LE BARREAU

Consideration of Bill 53, An Act to amend the Law Society Act / Projet de loi 53, Loi modifiant la Loi sur le Barreau.

LAWYERS' PROFESSIONAL  
INDEMNITY CO

**The Chair (Mr Jerry J. Ouellette):** I call this committee to order. I welcome everybody to the second day of hearings of the standing committee on administration of justice reviewing Bill 53.

At this time, I would like to call the first presenters forward. If the representative or representatives of the LPIC could come forward, and identify yourself or yourselves for Hansard, we would appreciate it, and to ensure that you know, there's a total time allocated of 20 minutes. At the conclusion of any presentation you may have, the time is divided equally between the three caucuses for questions and answers.

**Mr Malcolm Heins:** Good afternoon. My name is Malcolm Heins and I'm president of the Lawyers' Professional Indemnity Co. We are the insurer that provides malpractice insurance to the 17,000 members of the bar currently practising law in Ontario.

As the professional liability insurer to the profession, we at LPIC handle the fallout from lawyers' mistakes or incompetence, as the law society requires that lawyers purchase errors and omissions insurance. In many respects, you can think of us as the backstop in the system. As the backstop that attempts to remedy the wrongs, we have a strong interest in the amendments to the Law Society Act and in any initiatives in the act which address the interrelated issues of competence, standards of practice and quality of legal services.

We know from our statistics and studies that enhancing the powers of the law society to set standards of practice, conduct practice reviews, and issue recommendations and orders based on the findings made during the review should help reduce the instances of professional negligence and incompetence. For LPIC that, of course, means

fewer claims, and fewer claims benefit members of the public and lawyers alike. As an insurer, we have first-hand experience with the toll that claims take financially and emotionally, not only on lawyers but on members of the public, most importantly.

While insurance provides some measure of financial compensation, we at LPIC cannot begin to address the emotional and physical cost of claims, on both the client and the lawyer. A good example, and one we see often, is the client who, because she feels aggrieved by the level of service rendered or the result achieved, sues her lawyer, only to discover many months into the process that she does not have a compensable claim, although she may well have an issue with respect to the quality of service rendered. Therefore, any initiative that helps make lawyers better practitioners, and reduces claims and their negative impact on the public and the profession, must have LPIC's full support.

To put my comments and concerns in perspective, let me share with you a few statistics which will help you understand the magnitude of the problem I'm talking about. Each year the Lawyers' Professional Indemnity Co handles approximately 2,000 new claims. We spend, on average, \$75 million a year to resolve these claims. Over the past nine years, Ontario lawyers have racked up 27,000 claims at a cost of over \$675 million. Overall numbers, however, tell only part of the story. What may be surprising to you is that 80% of those claims, both in terms of numbers and costs, are caused by 20% of the lawyers. These lawyers often make the same mistake over and over again.

It is our view that a significant number of these claims could have been avoided if lawyers were subject to the kind of monitoring outlined in the proposed Law Society Act legislation. One jurisdiction that has already gone down this road is the Barreau du Québec. This is the regulating body for Quebec lawyers, the equivalent of the Law Society of Upper Canada. Fifteen years ago, it implemented a multi-pronged professional inspection service that sees lawyer inspectors pay personal visits to about 20% of its membership every year. Thus, about once every five years each law firm receives a visit and a set of written recommendations for improving that firm's practices and procedures. Although some of these recommendations are optional, many do carry the weight of regulation behind them. Failure to comply can and does lead to disciplinary action.



Interestingly, the Barreau's claims costs have fallen significantly over the past decade, due in part, they say, to the rigour of its professional inspection program. My own experience, both in law and in insurance, leads me to believe that the Barreau's experience speaks to the correlation between closer monitoring and a reduction in errors and omissions, and at the end of the line, claims.

What the Barreau's example shows us, and what our own experience in claims handling tells us, is that proactive action aimed at the cause of claims is much more effective than the reactive stance in which we all now find ourselves. Addressing issues of competence before they escalate into issues of misconduct or negligence is a much more cost-effective option than attempting to provide compensation through the claims process. Interestingly, the act's definition of incompetence closely mirrors our own statistics on some of the root causes of claims.

At LPIC, we have one solution which we call PracticePRO. This is our new risk management initiative launched over the past summer, which is designed to help lawyers practise in a more proficient and professional manner, but ours has to be a voluntary initiative. As the insurer to the profession, our clout is limited to raising awareness, and providing lawyers with some tools and resources to steer them in the right direction.

What is needed, if we're to fundamentally address the cost of claims, financial or otherwise, is a more effective regulatory framework that sets standards for competence; provides a flexible, dynamic mechanism for monitoring and investigating these standards; and finally, ensures a measure of compliance.

In LPIC's view, the proposed changes to the Law Society Act meet these needs. Specifically, we see the sections empowering the law society to conduct practice reviews, issue recommendations and compliance orders, together with the enhanced powers to deal with situations where lawyers are incompetent or incapacitated, as a cornerstone in the battle to reduce the number of claims and their costs.

As a businessman, I cannot help but point out that the kind of scrutiny lawyers would be subject to under the proposed act is entirely in line with existing business practices. Consumers entrust lawyers with a considerable amount of autonomy and authority over their affairs. I am certain that these same consumers would be surprised to know that the law society currently has very limited rights of audit and investigation, particularly given the extent of authority often entrusted to lawyers, whether in the administration of trust accounts, estates or other dealings.

The corporate world is more rigorous in its audit requirements than we are today under the Law Society Act. Even LPIC, as an insurer, is frequently asked to open its files and books to its regulator, the Financial Services Commission, as well as to its reinsurers and excess insurers. Why should lawyers be any different?

In our view, the ability to set and administer standards, together with enhanced powers of audit and investigation, simply bring the law society and its members to the same

level as would be anticipated in the corporate world and certainly in line with the public's current level of expectation.

Over the longer term, far more effective regulation is achieved through prevention rather than enforcement. We at LPIC view the proposed Law Society Act amendments as a major step in that direction and a critical requirement to reducing claims and improving the standards of practice of Ontario lawyers.

Those are my comments, Mr Chairman.

1540

**The Chair:** That affords us just under four minutes per caucus. We begin with the official opposition.

**Mr Bruce Crozier (Essex South):** Welcome to the committee. You may know, or I will at least admit, that I am not a lawyer. I'll also say that I'm an accountant by profession, which may not be much of an admission either.

Just to clarify, you did say that 80% of the claims were caused by 20% of the lawyers. As a layperson, that seems rather high. I'm certainly not doubting it but just whether I understood that correctly. That seems significant to me. You feel then that this legislation will hopefully help to dramatically decrease that percentage?

**Mr Heins:** Yes. The reason, bluntly, is that there is nothing to cause a lawyer to change their course of conduct or the way they practise if it is an imprudent way. The law society, if you actually look at the act today, really has very limited authority to go in and issue an order and say, "You must practise in this way." Other than that, if it gets to point of being egregious — but by that point, the horses have bolted, so to speak.

**Mr Crozier:** Again as a layperson, when someone has a complaint against a lawyer and you then become involved, I assume there's a process. Are they required under their insurance coverage to notify you, number one? I'm curious, are most complainants represented by lawyers themselves?

**Mr Heins:** Some 95% of complainants, or even higher, would be represented by lawyers. Our policy requires the lawyer to report a claim that is made against them. A claim is a little different from a complaint. A claim is where there's an allegation which requires compensation effectively as a result of a professional service. That circumstance is beyond, for instance, what the law society staff might deal with where there's just been what I'll call a bare complaint, without an allegation of negligence and a claim for damages or compensation.

**Mr Crozier:** Would there be circumstances where you would pay a claimant a determined sum of money separate from what the law society may do with its authority to discipline?

**Mr Heins:** Absolutely. That would, in most instances, be the rule as opposed to the exception.

**Mr Peter Kormos (Welland-Thorold):** What do lawyers pay now for premiums?

**Mr Heins:** A base rate of \$3,650 per lawyer. It goes up higher depending on your claims experience and it can go down lower depending on your area of practice, but that's what we call the base rate.

**Mr Kormos:** Do you anticipate, with the implementation of the more stringent — can I call them more stringent supervisory powers of the law society in this bill?

**Mr Heins:** I think that's fair.

**Mr Kormos:** Do you anticipate a reduction in the errors and omissions?

**Mr Heins:** Over time, yes, all things being equal.

**Mr Kormos:** Is it fair to ask you what kind of time frame?

**Mr Heins:** We should start to see some impact, I would say, in about three to five years, in that time frame, the point being that it takes about three to five years for a claim to be made from the date of the negligent act. Some things just aren't discovered until later in the day. We will start to see an impact within that time.

**Mr Kormos:** You've got the interesting observation of 20% of lawyers causing 80% of the claims, and you talked about the gross 27,000 claims over nine years at a cost of \$675 million. Do you have numbers in terms of what the — averages are so inadequate in terms of explaining.

**Mr Heins:** An average claims cost?

**Mr Kormos:** What's an average claims cost?

**Mr Heins:** An average claims cost is about \$30,000-odd.

**Mr Kormos:** Is there a deductible in that?

**Mr Heins:** There's a deductible. The lawyer is responsible for a deductible at \$5,000 on average.

**Mr Kormos:** That's the average and that's a number that we know how it's arrived at. What's a typical claim?

**Mr Heins:** The majority of our claims arise as a result of lawyers' failing to follow instructions. They can really run the gamut; not perhaps appreciating what service the client is really requiring of the lawyer, failing to fill the client's expectations in the service.

Let's take a simple example. There's somebody buying a house. The person is buying the house with an intention of putting a two-storey addition on it, only to discover when they go to do so they can't. Inevitably, there will be a claim against the lawyer and the issue will revolve around what communication took place as between lawyer and client at the time the house was purchased. What you see there is a difference in expectations. The lawyer says, "You got good title to the property." The client says, "Yes, I did, but I actually wanted to put this two-storey addition on it, so what good is the house?"

**Mr Kormos:** Are there areas of practice which have a greater tendency to have claims as compared to other areas of practice?

**Mr Heins:** First and foremost is real estate practice; second is civil litigation.

**Mr Kormos:** Is there a profile of a lawyer more likely to have a claim made against him or her?

**Mr Heins:** We have really struggled with that one, Mr Kormos, and we cannot put that kind of profile together. Certainly, you can start to put a profile together if you're in the office looking at what has transpired in the office in terms of their records, their adherence to commonly accepted practice etc. But to actually look at a lawyer, outside of being able to do the kinds of reviews that are in

this act, you can't tell. If you put three lawyers in front of me, I can't tell you which one will have a claim made.

**Mr Kormos:** I'm not sure I asked the question fairly then. I'm not talking about short, fat, skinny, tall. I'm talking about the size of practice, big city, small town —

**Mr Heins:** Yes, we've done all of those analyses. Lawyers in smaller practices are more likely to have claims than lawyers in larger practices statistically. That's both by dollar value and by numbers of claims.

The real root issue for us is looking at the way lawyers practise and their course of conduct during their practice, and statistics can't help you with that. Unless you've actually maybe gone in and done the investigations across the profession and then statistically analyzed those, which we are not able to do today, we can't get a profile of that.

**Mr Bob Wood (London South):** It would have been my understanding that you could impose right now, without the new act, conditions on people's getting insurance. Can you not?

**Mr Heins:** To a point. We can't go further than the law society's underlying authority. For instance, it would be our view that we could not impose a right of audit through the insurance policy when the law society itself does not have a general right of audit, if you take that point.

The law society can compel the lawyer to purchase insurance, they can direct them to a particular insurer such as us, they can impose terms and conditions under that policy, but according to the opinions that I've read, they can't go as far as actually extending their authority beyond the authority they have in the Law Society Act.

**Mr Bob Wood:** But insurers can normally do that, can they not?

**Mr Heins:** That's a matter of contract, though, and is optional. In this instance, lawyers must be insured and they must buy insurance from us. Where I think you might be going with that question, if you then said, for instance, "Let's just throw it open" —

**Mr Bob Wood:** Since you've raised that, why don't you address that issue.

**Mr Heins:** If you threw it open, and if I was one of that group of lawyers —

**Mr Bob Wood:** Since you raised it and I responded to it, tell me what you think the pros and cons are for maintaining the monopoly on the basic coverage and that the pros and cons are for eliminating the monopoly.

1550

**Mr Heins:** I guess the pros are that people would have a freedom of choice and perhaps feel more comfortable as to where they were actually purchasing their insurance. The major con to that is that we would see a wide variation in pricing in the market. Some members would not be able to buy insurance based on the claims experience they have or based on their practice profile.

The society would then have to decide whether or not the ability to purchase insurance in and of itself is going to be a reason to push people out of practice. At this juncture the decision has been — because historically this has already happened — that that will not be the determinator,



in which case they will have to arrange some kind of a facility program for these people, in which case you get back to subsidization from the other members. At that point, all you've done is increase the administrative costs of the program.

The program currently simply returns the profit to the members, to the extent there is a profit in the program, through reduced premiums. It is, by all measures, a more efficient system the way it presently is operated insofar as the membership is concerned.

**Mr Bob Wood:** On what do you base that?

**Mr Heins:** Comparison cost of delivering the product under this system as compared to the commercial markets cost. We deliver the product for about 5% of premium. Most commercial programs run 20% to 30%.

**Mr Bob Wood:** If that's right, if you open the market, LPIC would get all the business, would you not?

**Mr Heins:** It all depends on whether or not we have to insure all the lawyers. In a free market we would not want to insure all the lawyers. To many lawyers we would say, "We will simply not insure you."

**Mr Bob Wood:** You wouldn't have to if you had a facility fund.

**Mr Heins:** Then the profession would have to reach the conclusion that cost of insurance will be the arbiter as to whether you practise or not.

**Mr Bob Wood:** Do you have a problem with that? If you're an incompetent lawyer and were paying \$2,000 a year —

**Mr Heins:** Incompetence may have nothing to do with it. It may be just the area of practice you choose to practise in, in which case you could well have the public not having access to certain classes of lawyers. For instance, plaintiffs' lawyers in the United States are by and large not insured. The market will not insure them.

**The Chair:** Thank you very much for coming forward today. We very much appreciate your presentation.

We would call our next presenters forward, the representatives of the Metropolitan Toronto Lawyers' Association.

**Mr Gerry Martiniuk (Cambridge):** I'm sorry, Mr Chairman, may I interject? This may be an inappropriate moment, so excuse me. I was asked a question yesterday by Mr Kormos and I think it's incumbent on me to reply. As I understood the question, Mr Kormos's query was directed towards whether or not there is a copyright on Ontario court judgments, and if so, has that copyright devolved to the Law Society of Upper Canada?

I am advised by ministry staff that this very issue is the subject of the present lawsuit between CanCopy et al and the law society. As it is a matter before the courts, it would be inappropriate to provide that opinion to Mr Kormos, though it's an excellent question.

**The Chair:** You may respond, Mr Kormos.

**Mr Kormos:** What's the government's opinion?

**The Chair:** I believe we have an answer to that.

**Mr Martiniuk:** I've just given it to you.

## METROPOLITAN TORONTO LAWYERS' ASSOCIATION

**The Chair:** Just prior to beginning — I haven't started your time yet — if you could identify yourself for Hansard we would appreciate it. Thank you for coming.

**Mr John Ritchie:** My name is John Ritchie and I am the treasurer with the Metropolitan Toronto Lawyers' Association.

Hearing from Mr Heins earlier, I don't know what category I fit into among the lawyers against whose claims — but I am bald, so whether that category is part of the questions that you were asking, Mr Kormos, I don't know.

The Metropolitan Toronto Lawyers' Association position on this legislation is that we support the legislation other than certain impugned sections, specifically sections 42(2)(a), 49.2, 49.3. Those sections are associated with section 49.5 and 49.6 where a benchers is involved. The key section that we're concerned about is 49.8 and of course the section that effectively eliminates the Statutory Powers Procedure Act rights, that is, 61.2(4).

Those are the sections that we have concerns about. Essentially those sections, in our opinion, give a right of search and seizure which we believe is unwarranted. Our position is that, similar to a government, which governs in the public interest, the Law Society of Upper Canada is supposedly to govern also in the public interest, not in the interests necessarily of the lawyers. The government has created and is subject to the charter rights, which don't give it any right of search and seizure without due process. We believe that the law society should not have the right of search and seizure without due process. The act is, we suggest, quite arbitrary in the sense that the secretary can simply, on his wish or whim, have the right of search and seizure.

Our second point is, to coin a trite phrase, if it ain't broke, don't fix it. We suggest that the existing legislation is quite capable of enforcement. As a matter of fact, I was reading an article from the Star yesterday, and apparently Mr Ruby, who was before you, is a benchers. He therefore represents somebody in power. It's interesting to note that it's funny how power seems to influence Mr Ruby's opinion. All of a sudden he's on side with the law society. I know he has a history of standing up for individual rights.

There seems to be a purpose behind the bill of helping to reform the poor image of lawyers in the province. I'm not sure that legislation will ever improve the poor image of a lawyer. I notice Mr Ruby, at least in the Star article, stated, "The law society is now pretty good at tracking down, after the fact, lawyers who steal or cheat, and we're pretty good at drumming them out of the profession." Ruby said that only 70 of the province's 28,000 lawyers are under investigation for fraud or theft. There are procedures in place, we suggest, without these sections that we impugn being passed.

I would like to add one further matter. Very often, the complainants to the law society are not in fact clients. If clients complain, there really is no problem because it's

the client that has the solicitor-client privilege. The client can tell the law society: "I waive the privilege. Do whatever you want with my notes." Very often, complainants are opposing litigants who are unhappy with the fact that a lawyer may have succeeded for his client and they don't like it. They complain to the law society and the law society deals with those complaints.

There is room, we believe, for excesses in those provisions of the proposed legislation. We suggest that they're not needed and that they are in fact excesses, as I have stated.

1600

**The Chair:** Thank you very much. That allows us a little over four minutes per caucus. We begin with the third party.

**Mr Kormos:** Thank you very much. Not only was Mr Ruby here yesterday, but Ms Callwood and Ms Sealy were here yesterday, both of them former lay benchers. Both talked about, Ms Callwood particularly, the need for intervention that may not constitute discipline; that is to say, lesser types of intervention. She indicated she felt frustrated because she couldn't do those things under the current legislation. More directive and disciplinary — I hope I've put her positions adequately before you. I wonder if you'd comment to that.

**Mr Ritchie:** We believe that if you eliminate these sections that I've indicated we wish to impugn, the rest of the act gives the power of the law society to go in and do these kinds of questions and answers. What we're concerned about is the power to really go in to the clients' files and have a look. We say if the client consents, there's no solicitor-client privilege so you can go into those files and have a look.

**Mr Kormos:** I suppose I was responding to your "If it ain't broke, don't fix it" proposition. The executive assistant to the Attorney General is here, as compared to the Attorney General.

**Interjection:** I find sometimes that's better.

**Mr Kormos:** He's never happy and rested, as compared to his boss.

Were you consulted during the course of the preparation of this legislation, the Metropolitan Toronto Lawyers' Association?

**Mr Ritchie:** Not during the course of the preparation of legislation, no. We made a submission and the Attorney General did respond to our submission after the fact.

**Mr Kormos:** After the bill was —

**Mr Ritchie:** After the bill had been prepared.

**Mr Kormos:** The other issue, I suppose, is the comment we just heard from the Lawyers' Professional Indemnity Co. Granted, that submission didn't specifically refer to the sections that you referred to, which others have referred to as well, and I think the CBA is going to speak to them this afternoon. I'm confident they're going to speak to the very same sections, confident because I've heard them speak to them before and I've read their submission in that regard. But what do you say to the LPIC? Again, I appreciate that they didn't identify the sections that you speak of as being the ones which will

function to reduce claims, but they spoke of the bill in the broadest terms as having the capacity to reduce claims and therefore reduce premiums for lawyers. I've raised that because where I come from — I'm from small-town Ontario down in Niagara — those premiums of, what, \$3,340 are a killer. There are a lot of small-town lawyers with modest practices.

**Mr Ritchie:** Basically there's a difference, as Mr Heins pointed out, between the claims and complaints. We are insured, so the insurer, like any insurer, when there is a claim made against us, can come in and basically do whatever the insurer has to do because we, through the law society, have signed on a policy in which we have to cooperate with LPIC. I'm not sure that what I am complaining about on behalf of the MTLA has any real relevance to what Mr Heins is here about.

**Mr Kormos:** Finally, and I hope I have enough time, I know what you're saying on behalf of the members of your association, on behalf of lawyers. If you have any idea, what do you think the public's view is? Do you think the public shares your —

**The Chair:** Thank you, Mr Kormos. Didn't quite get it in. I move to the government members now.

**Mr Martiniuk:** Thank you, Mr Ritchie, for your presentation here today. I too am steeped in tradition; when were you called before the bar?

**Mr Ritchie:** In 1973.

**Mr Martiniuk:** Well, I beat you; I was 1964. In any event, one that is steeped in the tradition —

**Mr Ritchie:** I had to go through an engineering business for a while. I am also a member of that profession.

**Mr Martiniuk:** I did an economics degree at the same time, but in any event, I too am steeped in the tradition but I've always been of the opinion that if this society that we live in and our province and our country — that we must adapt to changing circumstances and we must produce the best product we can. On what rationale would you say that an act that has been around for 25 years is perfect and needs no change? That's sort of what you indicated: "If it ain't broke, don't fix it." Do you feel that the act is perfect in all regards at the present time?

**Mr Ritchie:** No, hardly. I'm sorry, my comments may have been taken out of context. I am referring specifically to the sections that I stated, and that is the investigative powers of the law society. I agree and I think I opened my comments by saying that those are the only sections of the act which we believe are improper.

**Mr Martiniuk:** OK. You have no objection to the law society, for the first time, having authority in the field of competence.

**Mr Ritchie:** Yes, no problem with that.

**Mr Martiniuk:** Do you think that's a good idea?

**Mr Ritchie:** I think that's a good idea.

**Mr Martiniuk:** I travelled around the province on another matter for the Attorney General and I get this strange feeling that some of the lawyers do not feel part of the law society. As I understand it, the law society represents all the lawyers in this province, but you seem to indicate that somehow the law society is more interested



in power than representing the lawyers. I really don't understand that philosophy.

**Mr Ritchie:** The law society does not represent lawyers; the law society's mandate, and Mr Strosberg can speak to this, is to represent the public interest, not to represent lawyers. I'm here speaking for the Metropolitan Toronto Lawyers' Association. We are a group of volunteer lawyers who formed an association. The law society is our governing body but its mandate is to represent the public interest regarding the legal profession, not to represent lawyers.

**Mr Martiniuk:** And you're here to represent lawyers.

**Mr Ritchie:** I'm here to represent our lawyers.

**Mr Martiniuk:** OK. I just want to deal, then, lastly with the philosophy of "privilege and right." As I understand it, being a lawyer in this province is a privilege. There is no right to be a lawyer. You have intermingled, in my opinion, rights and privilege by, for instance, talking about governments and criminal law and dealing with peoples' rights. Here we're not dealing with those; we're dealing with the privilege of practising law and the conditions under which you're going to practise. How do you reconcile those two? Are they identical to you, rights and privileges?

**Mr Ritchie:** No. That's eliminating lawyers having any rights. If that's the wish of the Legislature, eliminating lawyers having rights vis-à-vis their governing body, then this act should go forward. If the Legislature wants to maintain some rights of lawyers vis-à-vis their governing body — and there's more than just the legal governing body, obviously, in terms of the professions now. I think this government has established a governing body for teachers even, as I understand it. The issue is the rights now of lawyers vis-à-vis their governing body. We believe that lawyers should have some rights vis-à-vis their governing body.

**Ms Annamarie Castrilli (Downsview):** Thanks very much for being here. I don't hear you saying that you're against the thrust of the bill. What I hear you saying is that there are some sections of the bill that you would like to see changed, amended, clarified, in the public interest.

**Mr Ritchie:** Correct.

**Ms Castrilli:** Let me ask you if you could be a little more specific. I've heard your objections to the various sections. One of the jobs that we have to do here in committee is to look at the legislation and then make practical amendments to the legislation if warranted, so I wonder if I could ask you elaborate on some of the points that you've made and help us in our job.

I have before me a letter from the Information and Privacy Commissioner. You don't have the benefit of that but, if I may, I will read a couple of sections because they mirror some of what you've said. The commissioner's office says, "I believe that consumers of legal services would accept (and expect) that the law society has some access to their client files for the purpose of maintaining standards in the profession.... The challenge is to provide adequate safeguards to ensure that personal information is only collected and used to the extent necessary."

The first question I would ask you is, would you agree with that? My sense, from what you're saying, is that you would. If you do, then the second question is, what kind of safeguard, in the opinion of your association, would be adequate?

1610

**Mr Ritchie:** The answer to your first question is yes. The second is that, as I mentioned earlier, due process is something that we believe in as an association. When I say "due process," that means that in order for an investigation to take place, in order for somebody to go through your files, there should be reasonable and probable grounds that should be looked at by an independent arbiter of some sort.

We haven't canvassed an exact wording that should replace the section. For instance, section 49.3 simply says, "The secretary shall require an investigation to be conducted into a member's conduct if the secretary receives information suggesting that the member may have engaged in professional misconduct." The secretary's making an arbitrary decision. There's no due process involved. For whatever reason, that individual would just make the decision. It doesn't say there has to be reasonable and probable grounds. There doesn't have to be due process.

We would certainly suggest that any kind of legislation along these lines have a due process clause. For instance, in the Criminal Code of course, as you know, if there's suspicion, then you take your suspicions to a judge and he looks at them and issues a warrant if he believes there has been conduct. There could be a body of the law society set up, a group of benchers who are charged with this task much like a judge is. That would be an alternative. There just has to be some due process.

I suggest going even further. I know the law society takes the position that the law society is the repository of the solicitor-client privilege. I take great issue with that personally. We haven't gone over it to any extent in our association, but obviously our concern is what happens to the information the law society collects.

**Ms Castrilli:** The Chair tells me I don't have more time, but thank you very much.

**The Chair:** Thank you very much for coming forward today. We very much appreciate that.

#### LAW SOCIETY OF UPPER CANADA PROFESSIONAL REGULATION SUBCOMMITTEE

**The Chair:** We would call our next presenters, if representatives of the Law Society of Upper Canada legislative subcommittee could come forward and identify yourselves for Hansard. Thank you for coming.

**Mr Gavin MacKenzie:** My name is Gavin MacKenzie. I'm here in my capacity as a bencher of the law society and a vice-chair of the law society's professional regulation committee, which is the standing committee of the law society that has responsibility for discipline, policy and professional conduct, as many of the

members here will know. But just so that you have a broader view of the perspective I bring to this, I should tell you also that over a number of years in my professional practice as a lawyer, I've done a good deal of professional discipline work. I've often represented lawyers before the discipline committee of the law society and convocation. There was a period of about three years in the early 1990s when I served also as the law society's senior counsel for discipline, and in that capacity I was the senior person responsible for prosecuting complaints of professional misconduct and conduct unbecoming.

There are really three things I wanted to touch on in my presentation today. First, I wanted to talk about the need for reform very briefly. I've been involved in the various capacities I've mentioned over a period of almost a decade now in the law society's initiatives to try to reform its discipline and investigation process to make it more efficient and more effective and to serve the public better. I'm delighted that this bill has now reached this committee, and it's certainly my fervent hope that it goes forth and is enacted into legislation.

With respect to my friend Mr Ritchie, the last presenter, in my respectful view the system is broke. It is in need of reform and change. The system we now have for discipline is a cumbersome, two-tiered process that could be much more streamlined, much more efficient. The law society is often criticized, and sometimes with justification, for not identifying quickly enough problem lawyers, lawyers who are not as competent as they should be, who are not honest. It's certainly a blot on the profession as a whole which lawyers want to eliminate where discredit is brought upon the profession because of the acts of dishonest or incompetent lawyers. So I say with respect that reform is urgently needed.

The two aspects of the bill I wanted to speak about briefly are two aspects that have been touched upon by other presenters as I've been sitting waiting my turn today. The first has to do with the standard that the law society should be guided by or required to abide by in starting an investigation, which is an aspect of the matter that Mr Ritchie spoke about. The second aspect of it is the privilege and confidentiality of client documents. Both of these are very tricky subjects that are difficult to balance.

On the first point, what I wanted to do was to make it concrete for you, just to explain why that standard for initiating an investigation, in my respectful view, should not be too high. One possibility is that the law society should require reasonable and probable grounds, a standard that Mr Ritchie referred to in his presentation, before starting an investigation that would permit it to look at client files. In my view, that's too high.

One reason why is that the law society often will get anonymous complaints. For example, a secretary or a bookkeeper in a lawyer's office may write a letter to the law society anonymously. For obvious reasons, that secretary or bookkeeper won't want to identify himself or herself because his or her job may be in jeopardy, but will write a letter to the law society saying, "You should come in and do an investigation of the books and records of my

employer" or "You should look at this particular file and what happened to the settlement funds in that personal injury complaint."

Because it's anonymous, the law society can't immediately verify with the complainant whether there's anything to that complaint or not. It may very well be a frivolous or vindictive complaint. Sometimes the law society will get anonymous complaints from disgruntled former employees, disgruntled former spouses. There may be nothing to them. The problem is that because it's anonymous, the law society just doesn't know, but it's very much in the public interest that the law society have the power to go into that lawyer's office and to look at that file and look at those books and records that have been identified by that anonymous complainant, because more often than not there will be cause for serious concern. As I say, it's very much in the public interest that the law society have the power to go in very quickly.

So however you define the standard, is that reasonable and probable grounds? Probably not. The complaint is anonymous; we can't check it. We don't know whether that's reasonable and probable grounds. It is information suggesting there may be a problem, which is the wording of the current version of Bill 53. All I would urge you is not to set that standard too high, because you won't be serving the public interest if you do so.

As for privilege and confidentiality, that too is a very tricky subject. What I want to emphasize before the committee, though, is that there's no way that the regulator, the law society, can do a proper job of investigating a lawyer without looking at client files. It can't do that any more than the College of Physicians and Surgeons could do a proper job of investigating a doctor's practice without looking at patient records. It's absolutely essential that the law society have authority to look at those client files. It can't do so without the client's consent, and often the clients are not positioned to consent. It's important as an investigative tool that the law society have the power to review client files; otherwise it simply can't do its job as a regulator.

There's no question that information that is imparted by clients to their lawyers with an expectation of confidentiality remain confidential. Bill 53 makes it very clear, as in my view the current common law does, that if the law society as the regulator looks at privileged material and requires it for an investigation or a discipline hearing, the law society is required to maintain that privilege, and that's as it should be. That privileged information should not be used for purposes other than the investigation, but it would be my respectful submission to the committee that the law society should have the power, must have the power, to review that privileged material.

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The only thing I'd add to that is that over the last 30 years the law society has taken the view, based on a leading authority in the English courts, that the regulator is the repository of the privilege; in other words, is entitled to look at that privileged material, but is obligated to maintain it in confidence. The law society has always



observed very strictly and will observe its obligation very strictly in the future to maintain the confidentiality and privilege of that material. Nobody is more sensitive to the importance of solicitor-client privilege than the elected benchers who are elected to those positions by their peers. They are lawyers; they respect privilege. For example, in the past when police officers have done an investigation and have asked the law society to produce material from its files, the law society has flatly refused to produce for the police privileged information that it has acquired, client information that it has acquired as part of an investigation, and it will continue to observe that privilege in the future.

Those are the comments I wanted to make to the committee. Obviously, I'd be very happy to respond to any questions you may have.

**The Chair:** Thank you very much. That allows us just a little over three minutes per caucus. We begin with the government members.

**Mr Martiniuk:** Thank you very much, Mr MacKenzie. I'm interested in the process that the law society followed, and for what period of time. I take it you were the vice-chair of the legislative subcommittees so you would be familiar with that. Could you tell us when the internal review of the law society was initiated and what the procedures and practises were that you followed?

**Mr MacKenzie:** I'd be happy to do that, Mr Martiniuk. The process started in 1989, in short. There was a special benchers' committee chaired by Roger Yachetti, who was a bencher at the time, to look into the law society's discipline process and how it should be reformed. There was a second special committee chaired by June Callwood, from whom you heard yesterday, to look into the complaints process of the law society.

Those two committees reported. With some revisions, their reports were accepted by convocation. Some of those recommendations did not require legislative reform and have now been in place for a number of years. Others did require legislature reform and are pending here. After that, convocation from time to time has reviewed various versions of the legislative package that has now gone forward to the government and has approved these.

That's how long the process has been going on.

**Ms Castrilli:** I don't think there is anybody who is going to quibble that there's a need to reform. The amendments have been a long time coming and they've been advocated for a very long time. The issues that you raise, though, are the most troubling ones that face the committee. Not only are they very sensitive, but as we draft the legislation we want to make sure it's the best possible legislation that we have.

I raised before the issue of the letter, the opinion of the privacy commissioner. In particular, on the second point that you make, the privacy commissioner has indicated that the bill should contain specifics about what kind of information would be collected, under what circumstances, and make sure that there is secure retention of that information in order to protect the solicitor-client privilege. The dilemma that we're in is, we're not trying to

impugn the law society and the way the law society conducts its business, but there are very specific recommendations that have been made by the privacy commissioner, who feels the legislation is inadequate with respect to those particular issues. I'd be interested in your comments.

I'm hearing you say that we should leave the status quo, that the law society has always behaved appropriately in the public interest and will continue to do so. On the other hand, we have a privacy commissioner who says, "Well, that's all very well and good, but we'd like to see something specifically in the bill that addresses these issues of confidentiality and privilege."

**Mr MacKenzie:** I can respond to that by saying that the bill does specifically address the questions of confidentiality and privilege. I've read the commissioner's letter and I certainly agree with the privacy commissioner that there's a difficult exercise in balancing the various interests there.

One of the difficulties is that I think it's impossible to foresee all the eventualities that are going to arise in specific investigations. Perhaps the best approach in those circumstances is to specify that the law society needs the power and has the power to review documents that are private and privileged and confidential but has the obligation to maintain them in confidence and not to use them for any other purpose.

I think it's explicit in the legislation that the privileged and confidential documents that the law society has the power to review and seize are those relevant to the investigation, relevant to any charge of professional misconduct that may be laid arising out of them. It's certainly clear to me from the bill that there's no realistic risk that the law society is going to seize irrelevant personal information concerning a client and use it for any ulterior purpose. The law society would be in breach of its duty if it were to do that. My view is that there's a very difficult and sensitive balance to draw there but that the current bill does strike the right balance.

**The Chair:** Thank you for your presentation today. We very much appreciate your coming forward.

## COUNTY OF CARLETON LAW ASSOCIATION

### COCHRANE LAW ASSOCIATION

**The Chair:** We would call upon our next presenter, the County of Carleton Law Association. Thank you for coming.

**Mr Bill Simpson:** Thank you very much. I am going to stay around and be part of the Canadian Bar Association's delegation as well in 20 minutes. However, at the present time I'm here representing not only the County of Carleton Law Association but I've been asked to represent the Cochrane Law Association, which was going to be present but because of a conflict in scheduling was not able to be here.

The lawyers for each of these two organizations are quite generally supportive of Bill 53, especially the complaints resolution commissioner, the competency, and not only competency but also the incapacity provisions that have been put into the bill, regional election of benchers and so on. There are only a few areas that we are objecting to. We have done this because we feel the act should be amended because there are these deficiencies in there.

As a lawyer practising in the city of Ottawa, we have just recently endured three full weeks' worth, about 23 days, of front-page stories in the Ottawa Citizen. The Ottawa Citizen was running these right on the front page, all about rogue lawyers and about the deficiencies that the law society had concerning getting rid of these rogue lawyers and the harm that was being done. It featured a number of disbarred lawyers going back 10, 12, 13 years in some cases. The theme of the story was simply that the law society wasn't fast enough to root out the lawyers and that there should be more regulation, that there should be a friendlier insurance system and that the compensation fund should be fully funded to make sure that no client lost any money. After going through this, on the last day that the reporter was representing, he gave 10 pieces of advice under the heading, "Buyer Beware: Ten Ways to Avoid a Crooked Lawyer."

The first piece of advice he gave was to use a paralegal, a completely unregulated and uninsured paralegal who would be able to do wills, uncontested divorces, various other things that the reporter thought should be done. So after spending three weeks in which it looked like he was telling us the law society needed to do a number of things, the first thing they suggest is, "Don't use lawyers, because paralegals can do them."

Why I mention it in this setting is only because you're being asked to pass this bill in the aftermath of those stories, and although the stories come out and certainly target the law society, there seems to be another agenda to these stories. They were all one-sided and there was very little behind them.

Bill 53 gives the law society a lot more powers, and we haven't objected and aren't objecting about that. The associations I am representing today only object to overriding the interests of clients, the rights of innocent clients and the rights of innocent lawyers. In the later presentation, Mr Rosenhek will join me and he will be talking more about the solicitor-client privilege and the problems of confidentiality.

1630

For the next couple of minutes, I want to focus on one area of the search-and-seizure provisions, and that's the area of taking away a lawyer's computer. As you may recall, section 49 is so set up that there need not be any grounds at all to begin an investigation, and if an investigation is begun on the suggestion or the rumour, the right to enter a lawyer's office and take away the computer is absolutely given to the investigator. It is not something that any more grounds than reasonable, or any reasonable grounds, should be there.

That computer is supposed to be taken away for the purpose of copying relevant information and then returning it, and it's to be returned promptly.

At the airport on the way down here today, I met the senior regional judge for the Provincial Court in Ottawa for eastern Ontario and he brought up the aspect of the computers. He said: "On this idea of taking computers away to copy things, the RCMP do that now, police forces do that now when they're doing investigations. It's months before they finish because they're trying to figure out what has been deleted and what may be encrypted and it's not necessarily something that is going to be returned within a few hours or a few days."

What "promptly" means will be left to the individual case and if they can't get the information off fast enough, then promptly could turn out to be a long time. If somebody is running an office, the loss of the computer during that period of time is devastating. For instance, somebody might want to put in a submission to a legislative committee and have it all prepared, and the computer's taken away and they can't finish it off at the proper time and they have to start over.

Those are the only comments I want to make about the computer aspect.

I want to raise something Mr Martiniuk raised with a previous witness and that was with respect to privileges and rights. Yes, it is a privilege to practise law, but the Supreme Court of Canada has in fact found that law societies across the country are subject to the Charter of Rights and Freedoms, and because of that lawyers actually have some rights. They have privileges, but there are rights involved as well. If this Legislature passes something that is beyond what is allowed by the Charter of Rights and Freedoms, which is the suggestion that is being made by the CBAO and by the other associations, including the Metro Toronto one that Mr Ritchie was here for, then when that happens, you're going to either have to make sure there is nothing wrong with what you're doing or you're going to have to override the Charter of Rights and Freedoms.

In this regard, let me just read one quote from Chief Justice Lamer in a 1993 case in the Supreme Court of Canada:

"Searches are an exception to the oldest and most fundamental principles of the common law and, as such, the power must be strictly controlled. There are places for which authorization to search should generally be granted with reticence and, where necessary, with more conditions attached than for other places."

He goes on by saying, "One does not enter a church in the same way as one enters a lion's den" — you must take a lot more precautions before you go into the lion's den — "or you don't go into a warehouse in the same way as you go into a lawyer's office."

That's where the problem comes in. In a lawyer's office there are confidences involved, there's more than the clients involved. It's something that is not the same as regulating a kitchen or a warehouse and there are certain rights that have to go along with that.



Those are the remarks I'd make at this time, members of the committee.

**The Chair:** Thank you very much. That allows us approximately three minutes per caucus and we begin with the official opposition.

**Ms Castrilli:** Mr Simpson, you came a long way to make your presentation and thank you.

I want to deal for a moment with this issue of a search and seizure. You quoted section 7 of the charter and I've asked previous presenters here if they felt section 7 of the charter was absolute, if there are any reasonable limits, and you might want to comment on that. But if the law society gets a complaint and they believe there are grounds for that complaint, what is an unreasonable search and seizure under those circumstances, in your view?

**Mr Simpson:** First of all, the problem is that the way the legislation is drafted, there is no requirement for them to have reasonable grounds. If you go back to what was actually passed by convocation, by the benchers, and was submitted to the government, which was to be section 34.3, they indicated that the secretary was going to investigate where the secretary receives information leading him or her to believe that the member may have engaged in professional misconduct or conduct unbecoming.

There was a very different test when the law society first sent this to government. Why it got changed, where it got changed, I've never been able to find out. I'm not privy to that, but all of a sudden it goes from having reasonable information to believe to having a mere suggestion of misconduct.

To suggest that because a lawyer's secretary who may have just got fired or is about to be has complained about the lawyer or that somebody else who is disgruntled complains against the lawyer, there's no reason they can't investigate, the problem comes in as to what they can do automatically when they start to investigate. Unless there's something more to an investigation than mere suggestion, the power should not be given to the investigator.

**Ms Castrilli:** We live in a computer world and you raised the issue of computers. All the lawyers I know rely on their computer. I hear what you're saying, that it may take a long time to copy the information. On the other hand, what should the law society do to gain access to the information in that computer that will assist them in their investigation?

**Mr Simpson:** Surely that is something where there should be somebody other than an investigator making the decision whether there are reasonable grounds to believe that something is going to come on from there. Section 8 of the Charter of Rights and Freedoms says that everybody — the last I read, it included lawyers — had the right to be free from unreasonable search and seizure. To have somebody able to take that computer away with everything that's in there, personal, private and also business, relating to every client you might have, goes well beyond. They should certainly have to move to do something other than have suggestions and suspicions.

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**Mr Martiniuk:** Thank you very much for your presentation, Mr Simpson. How do I, as a legislator, explain to the public that lawyers feel that, as a matter of solicitor and client privilege, there should be or could be substantial delays which would not protect the public? How does one balance the public good with what you are talking about as lawyers' rights?

**Mr Simpson:** I'm not sure whether we're talking about lawyers' rights or solicitor and client problems in your question.

**Mr Martiniuk:** They work out to the same thing because lawyers could be accused of using clients' rights as a shield, so we're really coming down to lawyers' rights and how they can be investigated.

**Mr Simpson:** Let me talk about the clients, first of all, because if a client has made the complaint, the client surely is going to consent to that client's file being looked at. If, however, the client hasn't been the consenting one, if it comes from a third party, and you often get this in aspects such as family law where the other party, the other spouse makes a complaint, that type of thing, that third-party complaint is something that in those rare circumstances, and it's a rare circumstance — it's not very often that that happens, I'm led to believe by the law society — that there is actually going to be a situation where they're going to want to look at things where the client hasn't complained, in those rare instances they can either ask the client to consent, or if the client won't consent, they should by that time have some reasonable grounds to seal the file and apply to a judge. It's not necessarily a long delay. You may be talking about a day, two days at the most.

**Mr Martiniuk:** In your experience, have you ever heard of an occasion or have you personally had knowledge of privileged information being divulged by the law society, or any member thereof?

**Mr Simpson:** I've been told about that. I've been told that certain things have been leaked to certain places at times. I'm sure the law society has a policy that that not happen. I have been informed at times that the Attorney General's department has been informed of things, on what basis I don't know. I have no personal knowledge and I don't really want to get into that.

**Mr Martiniuk:** These are just rumours.

**Mr Simpson:** Suggestions — same as section 49 says.

**Mr Martiniuk:** You have no personal knowledge?

**Mr Simpson:** No, I don't.

**The Chair:** Thank you very much, Mr Martiniuk. Thank you very much for that presentation. You may remain seated because I understand you're part of the next presentation.

CANADIAN BAR ASSOCIATION —  
ONTARIO

**The Chair:** If the other representative of the Canadian Bar Association — Ontario could come forward and

identify yourself for Hansard, we would appreciate it. Thank you for coming.

**Mr Steven Rosenhek:** Thank you very much, Mr Chair and members of the committee. My name is Steven Rosenhek. I am the president of the Canadian Bar Association — Ontario and I'm pleased to be here to represent the Canadian Bar Association in respect of its submission in respect of this bill.

As a first step, I want to introduce the Canadian Bar Association to you. It is a group representing more than 15,000 lawyers, judges and law students in Ontario. In the submission that I believe you have before you, on the first page you will see what our mission statement is.

We are an association of lawyers, judges and law students in Ontario. Our purpose is to advance the interests of our diverse membership and to promote the essential role of the legal profession in our society.

We seek to strengthen our role as the recognized voice for the Ontario legal profession, in co-operation with other legal organizations, and at the same time maintain and enhance our core activities.

I want to tell you at the outset that the Canadian Bar Association — Ontario strongly supports the vast majority of the bill that is being considered by this committee.

The points that Mr Simpson and I wish to address to the committee have to do with specific matters, specific sections of the bill before you to which we take objection or about which we have concerns. This does not detract from the essential and core fact that we support, by and large, this bill virtually in its entirety. There are significant concerns, however, about some of the provisions that we will speak about today.

As a further housekeeping matter, I want to indicate that I have a letter from the Cochrane Law Association indicating that its president is unable to make submissions, but fully endorses and supports the position of the Canadian Bar Association — Ontario and the County of Carleton Law Association with respect to Bill 53. I have that available for the members of the committee.

I also have, to the extent it has not already been made available to you, a letter dated October 2, 1998, to the Canadian Bar Association — Ontario from the Information and Privacy Commissioner/Ontario, Ken Anderson, director of legal services division, outlining concerns that body has with respect to some of the items I'm going to address. I'm happy to make those available to the members of the committee to the extent you wish to have it available.

I will address two discrete portions of this bill. The first is the provision of the bill with respect to the abrogation of solicitor and client privilege. The second is with respect to the provision that deals with the ability to derogate from and fail to incorporate the protections of the SPPA with respect to the bill that's before you.

I am now directing my attention, and I hope you will as well, to page 2 of our submission with respect to the secrecy of non-complaining clients' files.

In essence, the Canadian Bar Association's starting position, and I think a recognized legal concept, is that the

protection of that is granted to confidential information and documentation that changes hands between a client and his or her lawyer, is protected by the concept of solicitor and client privilege.

Furthermore, that concept of solicitor and client privilege recognizes as a fundamental proposition that the protection is that of the client. It is not that of the solicitor; it is not that of the government; it is not that of the governing body of the solicitor who happens to be involved in the enforcement of the protections and responsibilities that fall within the Law Society Act or the governing body of lawyers.

We start from the fundamental proposition that the protection is that of the public. I suggest respectfully to this committee that it is well established in the case law and a well-known fact to lawyers as well as to members of government that that protection is that of the client, that that protection is designed to protect the client and furthermore that it is only the client's to waive or discard if he or she sees fit.

Starting from that fundamental proposition, we take issue with these proposed sections, which in effect render those protections of no value or arguably wipe them out completely for the purposes of the proceedings contemplated by these sections.

We at CBAO respectfully suggest that it is inappropriate that those protections be erased, that they be discarded and that they be able to be discarded at will as is specifically contemplated by the provisions of section 49.2 with respect to making admissible in a proceedings information or documents even if the information or documents are privileged or confidential.

We then have the issue of why it is important that this protection be preserved, recognizing that it should be preserved, and the courts have long said that it should be preserved.

It should be preserved for the simple reason that clients should have the right to feel that their confidential information and documentation, conveyed to their lawyer, is granted protection. They should be safe in the knowledge that that protection can only be waived by them and with their knowledge.

What is contemplated in these sections is a procedure whereby that right not only will be eliminated, not only in our respectful submission will it be trampled upon, but it will be done without notice to the very person whose protection it is and remains. We say there's a good reason why that should not take place, because we want to ensure that clients are confident that confidential information and documentation is protected, and furthermore that they will be free from the fear that that information that is conveyed to their lawyers will, at some point in the future, without their knowledge be dispensed with and released, potentially with harmful consequences to the client.

That is the essence of my submission with respect to solicitor and client privilege. Where does that leave us in terms of what we are specifically recommending? We are specifically recommending there be a provision analogous to that which obtains in a variety of other statutes that



contemplate the exact same thing that's being proposed in this situation, where documents are being seized, for example, from a lawyer's office, and those files might contain information that is confidential and is provided in confidence by a client to his lawyer: the Income Tax Act, the Criminal Code and the like.

1650

The protection we seek is the standard protection which is granted in these situations, which is that the records be sealed and that there be a determination by a court based on information and material that clients want to put forward to protect that confidential information and a determination by a judge based on that information as to whether or not it's appropriate that the confidences in the documentation be protected.

In respect of the SPPA protections, what we are saying is that there is no good reason for a provision such as subsection 61.2(4) which, in effect, can nullify the protections under the SPPA. The SPPA rules are designed to afford minimum levels of procedural and evidentiary protection in the context of hearings. There's a good reason for SPPA protections because there is the risk of abuse otherwise and the failure to abide by minimum levels of fairness and procedural protections. What this section purports to do, and what it can do if abused, is eliminate those protections for hearings as important as those leading up to and resulting in disbarment.

What we have simply said to the law society and what we simply suggest to the government is that it makes sense that those protections be retained in a certain enumerated class of proceedings that are considered to be important. It may not be necessary; in fact, we don't advocate it. We don't advocate that it be necessary to consider that those protections obtain in all situations of all hearings, but certainly it makes good common sense and it accords with other pieces of legislation to ensure that important hearings, such as those that can lead to disbarment and the elimination of a lawyer's ability to practise and earn a livelihood, should have those protections.

All we need to do to correct that problem, with the greatest of respect, is to incorporate into the section an exception which eliminates the risk that the SPPA will be eliminated from hearings which are of fundamental importance, such as hearings leading to disbarment.

Those are my submissions in respect to those two sections.

**Mr Martiniuk:** Thank you very much for your presentation. We heard yesterday, in particular, that a compromise possibility might be for a member of the law society, a person of authority, to reach a certain legal determination in his mind rather than approaching a court; for instance, the secretary reaching the conclusion that there are reasonable grounds for a search. What would your opinion be in that regard?

**Mr Rosenhek:** That is an issue that is different in some ways from the issue of solicitor and client privilege, but if you're asking me whether or not it makes sense that the watchdog for the ensuring of protection to clients be

the party that is doing the seizing, I respectfully suggest that that's inappropriate.

The whole reason why it makes sense, in the context of other statutes, to ensure that an independent, overseeing court make that determination is precisely because there can be overexuberance and abuse by investigators in the context of carrying out their responsibilities. That's the reason why, for example, in the context of the Criminal Code, the police don't decide whether or not the protection should be granted in the context of searches that they undertake.

The court is the independent watchdog, and in our respectful submission there's no good reason, there's no logical reason why it should be anybody other than the court, in respect of overseeing the responsibilities of an investigator who is purporting to, and runs the risk of, releasing or falling upon confidential information that a client, whose right it is to protect it, doesn't want released.

**Ms Castrilli:** I'd like to focus on the part of your submission on the SPPA. I think it's the first time we've really had a chance to look at it.

The way I read subsection 61.2(4) is that the Statutory Powers Procedure Act applies, except insofar as there's a conflict with rules that may be made by convocation with regard to the hearing panel and the appeal panel and what orders may be made under that. So it's not blanket; it's tailored.

You're saying that's still too wide, that there may still be some orders for some hearings that should require the Statutory Powers Procedure Act to apply even under those circumstances. It seems to me pretty narrow when I read this and I'd really be interested in your view as to how you perceive it.

**Mr Rosenhek:** Yes, you're quite right. This section purports to allow convocation, for example, to make rules governing the conduct of hearings. Yes, it's quite possible that convocation could make eminently sensible and fair rules in respect of the conduct of hearings and there's no reason to believe that they wouldn't, in their wisdom, do that.

The risk is that convocation is a temporal thing. It doesn't withstand the passage of time because benchers come and go. So in order to ensure that there is an established and well-documented standard for the protection of those who are going to come before their discipline body for the life of the legislation, it makes sense that they know that those rules are going to be made, first of all, sensibly and for a period of time that can be relied upon.

It is precisely for the same reason, in response to the previous question, that one doesn't want to have the police overseeing the searches. One doesn't want to have the secretary of the law society, against whom we take no issue, deal with issues that may affect the conduct of proceedings for a period of time that will go far beyond the life of the people who are making the rules.

There's no reason why, in a case leading to disbarment, there should be any good reason not to invoke the protections of the SPPA. There may be grey areas in

respect of rules, in respect of hearings that don't have that fundamental importance, but one thing is perfectly clear: You can tell today and you can tell 10 years from now that in respect of hearings that lead to disbarment, those are important hearings. There is no good reason why the SPPA shouldn't be decreed, for all purposes, to apply to those hearings.

**Ms Castrilli:** Are those the only two types of hearings that you would specify? You don't specify the types of hearing.

**Mr Rosenhek:** The types of hearings are the hearings which can lead to disbarment.

**Ms Castrilli:** So any hearing that leads to disbarment should be subject to the SPPA, in your view?

**Mr Rosenhek:** Any hearing that can lead to disbarment should be subject to the SPPA and there should be no reason to question why that wouldn't be the case. In respect of other matters, it may be that rules can be appropriately designed from time to time.

**The Chair:** Thank you very much for coming forward today.

**Mr Simpson:** Mr Chair, I noticed that we only had 15 minutes of the allotted time. Can I take two minutes just on one area?

**The Chair:** I'm afraid that the other minutes were in the event that the NDP had shown up. The time was divided equally between the three caucuses at the conclusion of the presentation.

1700

#### LAW SOCIETY OF UPPER CANADA

**The Chair:** At that, we would call our last presenters forward, if the representatives of the Law Society of Upper Canada. Thank you for coming. You may begin.

**Mr Harvey Strosberg:** My name is Harvey Strosberg and I'm the treasurer of the law society, and that's the president of the law society. Frank Marrocco is chair of our government relations committee, and Elliot Spears has been involved as a liaison with the government.

There is one important, overriding obligation the law society has, and that is to govern the profession in the public interest. You, as legislators, represent the public interest. The law society governs the profession in the public interest and the Metropolitan Toronto Lawyers' Association, the Carleton county association and the CBAO represent lawyers' interests. Those three distinctions are fundamental.

The Law Society Act was last amended in 1970. There were 7,181 lawyers in Ontario at that time. Today there are 28,668 lawyers, 400% more lawyers. Bill 53 enhances the law society's ability to deal with discipline, incompetency and capacity. Without the powers that are set out in Bill 53, the society cannot efficiently govern this profession in the public interest. There is no question about that, and make no mistake about the fact that this bill fundamentally changes the relationship between lawyers and the society. That is the reason you've seen organizations that represent lawyers come forward and

say they want changes to part of this bill. Understandably, lawyers or some lawyers may be upset about this. But make no mistake about it, the changes that were suggested by the lawyers' organizations would eviscerate this bill, would mean that you could not possibly govern the profession in the public interest. Make no mistake about that.

It is impossible to suggest that the law society can deal with issues of competence without the ability to go into a lawyer's office and look at a large number of files. To suggest that you go out and get the consent of 50 or 100 clients is to say that you will have no ability to deal with competence. You will have no ability to deal with 20% of this profession that's causing 80% of the losses. Without the right of the law society to go in and look at a lawyer's file and require a lawyer to answer questions about allegations of misconduct, the law society will be stonewalled, and stonewalling is what is happening today.

What is suggested by the lawyers' advocacy groups is that there should be a regime that equates lawyers and their regulator to members of the public and the police. I say to you, that's not in the public interest. That is not an equation that makes sense logically nor does it make sense in the public interest.

I found it interesting that there is a complaint that the lawyers' groups assert about what they say is a breaching of solicitor-client privilege. This act says, and should say as clearly as it possibly can, that the law society is the repository of the privilege. Therefore, this act enhances solicitor-client privilege because it makes it absolutely clear that when the society gets the information that it gets from time to time the privilege is maintained. I find it rather ironic that lawyers' advocacy groups are wrapping themselves in the cloak of representing the public interest by being concerned about solicitor-client privilege when the net effect of their position will mean that solicitors will effectively be immune from appropriate regulation by their regulators.

This bill will reform the discipline system. There has been some suggestion about discussion from the privacy commissioner. I have written to the privacy commissioner and explained to the privacy commissioner — and I'll set this letter out to you afterwards — that the law society is acutely aware of the importance of privacy. I've offered to the privacy commissioner that, hopefully, when this bill is passed, we will work with the privacy commissioner to develop rules that will ensure that confidentiality is maintained.

The privacy commissioner wrote on December 3, 1998 and said:

"I understand the position that the law society has taken on this matter. The fact that the law society plans to build on the protections for confidential information by developing detailed privacy protocols is very encouraging news. I am indeed pleased to note that this project would take place in consultations with a wide range of stakeholders. In this context, I would be happy to commit the resources of my office to provide whatever assistance may be needed.



"My executive assistant, Greg Keeling, will contact you to schedule an introductory meeting on this issue. I look forward to meeting you."

I am delighted to say that the privacy commissioner will work with the law society in developing protocols that will satisfy the privacy commissioner.

It is also, I believe, significant that the Criminal Lawyers' Association has sent a letter to the Attorney General and was kind enough to send me a copy. These are the lawyers who go to court and deal in the criminal context every day. They have made a number of suggestions. The one suggestion that they made was under subsection 49.3(4), that the threshold of reasonable suspicion be required before a person conducting an investigation may be required to produce documents or before a person enters the premises.

That is not anywhere near the kind of standard that's been suggested by the other three advocacy associations, which I would suggest to you demonstrates the unreasonableness of the position that has been put forward by my friends who preceded me. I would tender this: The suggestions that the Criminal Lawyers' Association have made are sensible and reasonable suggestions.

Let me close by commenting upon the Statutory Powers Procedure Act. The law society operates through convocation. Convocation has, historically, given the full panoply of rights to lawyers who appear in discipline hearings. This section, relating to the Statutory Powers Procedure Act, fairly sets the balance. What is important here is that there is flexibility. I have said repeatedly that the law society will consult with a wide range of stakeholders in setting bylaws and setting rules.

This legislation was the result of a process that started in 1988 or 1989. There's been a huge number of people who have had input. The law society will take advantage of the input of all of the organizations that represent lawyers, the Attorney General's department, the privacy commissioner, and that will be put before convocation.

At the end of the day, the law society is governed by benchers, and in Bill 53 you provide that there will be a benchers' election every four years. At the end of the day, if benchers do not act reasonably, benchers will be removed in the same way that legislators sometimes are removed.

Make no mistake about what we're dealing with here. The positions that were put forward by the other groups are political positions that are intended to make it clear that those organizations, which, by the way, are talking about merger, are acting in the best interests of lawyers. You here today must act in the best interests of the public. We believe that to govern the profession in the public interest we must have this power. I would ask you to pass this legislation.

I have a handout which has some suggestions about some cosmetic changes that I would ask you to consider on your clause-by-clause determination. I'm grateful that you've heard me out.

1710

**Mr Crozier:** Welcome, Mr Strosberg and your colleagues. I have just a comment, and I say this with the greatest of respect because I know you. Now I have a little better understanding of how lawyers can argue both sides of a case, depending upon who they're hired by. I say that because you and others, I assume, belong to the Canadian Bar Association. Would you and other benchers belong?

**Mr Strosberg:** Yes, for sure.

**Mr Crozier:** But they're so wrong and the law society is so right. It's kind of interesting.

**Mr Strosberg:** I suppose the answer depends upon which side of the fence you sit on. Lawyers are very good at compartmentalizing. When I'm here representing a group that has an obligation to govern the profession in the public interest, I have a different set of obligations I have to follow, and those are priorities that have to take precedence.

**Mr Crozier:** With respect, I appreciate that.

**Ms Castrilli:** Let me ask you a question. Forgetting for a moment the comments that have been made by the lawyers' association, we have to deal with the concerns of the privacy commissioner. You in fact have said that you've been in correspondence with the privacy commissioner. I'm delighted to hear that. The letter you've quoted from is from Ms Cavoukian herself?

**Mr Strosberg:** Yes, it is.

**Ms Castrilli:** Has she in any way revoked the opinions that have been set out in the October 2nd letter we have?

**Mr Strosberg:** I can't speak for her any more than you can by the basis of this letter.

**Ms Castrilli:** But the letter doesn't contain that. It just says it wants to work with the law society.

**Mr Strosberg:** The law society believes it's important that it's set out in this legislation clearly that privilege is maintained. Any wording that would increase and make clearer that privilege is maintained as a result of disclosure to the law society, I'm all in favour of. We believe the language that's here, or if you strengthen the language, would be fine. Privilege would be maintained and confidentiality has to be maintained.

We believe that fervently, so we're on all fours. We think it's done by this legislation and we think it can best be dealt with on a flexible basis by dealing with bylaws and rules.

**Ms Castrilli:** Chair, this is an important point. This is our last presenter. We're ahead of schedule. Could we ask for unanimous consent to extend by a couple of minutes? Would that be all right?

**The Chair:** Two minutes.

**Ms Castrilli:** For each party, if that's all right? Thanks very much.

The privacy commissioner, on October 2, set out some concerns. I tell you frankly, I've asked questions but the time hasn't allowed for an in-depth discussion. The concerns raised in that letter haven't been addressed to any real extent, except the letter you've presented that says: "We'll work with the law society to strengthen the language, to work on some set of regulations following the

passage of the act as is." If I'm misquoting you, I apologize. I've not seen the letter. I'm just going from memory of what you read.

The concerns that are here I've not heard the law society speak to. I really would like to hear that. The Chair is going to cut me off; two minutes is going to come by very quickly. What I'm inclined to do, as I give you an opportunity to respond, is to take those concerns of the privacy commissioner and present them as amendments. The government may defeat them, but they will nevertheless stand as some sort of guidelines for whatever discussions may take place later. I want to be very clear on that.

**Mr Strosberg:** As I understand the scheme of the act, the law society has an obligation — I think Mr MacKenzie touched on this — only to take relevant information. "Relevant information" means that extraneous information ought not to be collected. Second, if there's an obligation to maintain confidentiality and an obligation to protect solicitor-client privilege, as there is in the bill, then what you have is a continuation of the same confidence and the same status, and the information is held in exactly the same way as in the hot lawyer's hands. Then when there is a provision in the act, as I believe there is now — it may require strengthening — that says the information collected about the client can only be used for the discipline process of the law society, it is not admissible anywhere else, and no member from the law society can be summonsed to give evidence in any other proceeding, what you have is a reasonable mechanism to ensure that confidential information and information that's privileged is maintained in confidence and that the solicitor-client privilege is maintained.

I believe, when you read the act in its totality, that that protection is there. I say, with respect, that there is no other manner that I've heard anyone suggest by which you could better do it than the scheme that is here.

**Mr Garry J. Guzzo (Ottawa-Rideau):** Thank you very much for your presentation, Mr Strosberg. The good news is that I'm from Ottawa and I'm here to help you. The bad news is that we haven't had a very good month in the practising bar in Ottawa. The 20% of the profession who cause 80% of the problem have been getting an undue amount of publicity. I'd be remiss if I didn't commend you for your defence of the situation; I thought it was extremely poignant.

It might be appropriate at this point if you might simply register on the record the type of problem that has been exposed, if you like, by a few rogue lawyers in the publications in the Ottawa Citizen, and how what we're

trying to do here might aid you in preventing what has been exposed in those articles.

**Mr Strosberg:** What we have from time to time is dishonest lawyers and lawyers who don't practise competently. Oftentimes we have clients who are in the dark. To suggest that you have to get a consent from the client means that the law society has got to try to tell a client: "By the way, we think your lawyer may be cheating you." Sometimes what happens is that the lawyer and the client are in cahoots. What do you do about that situation? How do you get around that situation? How do you get around the situation where the rogue lawyer has created a corporation and it turns out that his cousin or his wife or her husband controlled the corporation and they say, "Aha, it's solicitor-client privilege."

The beauty about this act is that it says the law society stands precisely in the shoes of the lawyer. It strengthens what Mr MacKenzie and Mr Ruby said was the common law and what I believe to be the common law. It means that there's no question about it. There's a preservation of confidential information, which is what Ms Castrilli was concerned about. That is preserved. Solicitor-client privilege is preserved.

The law society can go in and say, "This lawyer has acted dishonestly" or "This lawyer hasn't acted competently" and the society can be proactive.

The Ottawa Citizen talks about the fact that the law society is always going in afterwards, like Mr Ruby said. Yes, we're going in afterwards, and the reason is that we don't have the power to get in there before. We don't have the tools. Winston Churchill said, "Give us the tools and we'll do the job." We say, give us the tools and we'll do the job. We'll govern this profession in the public interest. It will give us the opportunity to start improving the image of lawyers, because we'll root out the dishonest lawyers, we'll root out the lawyers who are incompetent, and that will be the end of it. Those complaints that people have will be diminished dramatically. We can do it; we need the tools.

**The Chair:** Thank you very much. We very much appreciate your coming forward with your presentation today.

**Mr Strosberg:** May I distribute this material?

**The Chair:** Yes. The clerk can distribute the information.

With that, I just remind the committee that amendments are due tomorrow by 9 am.

The committee is adjourned until tomorrow at 3:30 pm.

*The committee adjourned at 1720.*









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Wednesday 9 December 1998

# Journal des débats (Hansard)

Mercredi 9 décembre 1998

## Standing committee on administration of justice

Law Society  
Amendment Act, 1998

## Comité permanent de l'administration de la justice

Loi de 1998 modifiant  
la Loi sur le Barreau



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Wednesday 9 December 1998

Mercredi 9 décembre 1998

*The committee met at 1529 in room 228.*

## LAW SOCIETY AMENDMENT ACT, 1998

LOI DE 1998 MODIFIANT  
LA LOI SUR LE BARREAU

Consideration of Bill 53, An Act to amend the Law Society Act / Projet de loi 53, Loi modifiant la Loi sur le Barreau.

**The Chair (Mr Jerry J. Ouellette):** I call this committee to order. This is the standing committee on administration of justice on clause-by-clause consideration of Bill 53, An Act to amend the Law Society Act. For further reference during the proceedings, I will refer to the upper right-hand corner of each of the presented amendments. Those will be referred to as committee motion numbers for further reference.

At this time, we'll move directly into section 1. I would ask, Mr Martiniuk, if you could proceed with explanation, please.

**Mr Gerry Martiniuk (Cambridge):** I move that the definition of "life bencher" in section 1 of the Law Society Act, as set out in subsection 1(3) of the bill, be amended by striking out "paragraph 5" in the second line and substituting "paragraph 3."

This is a housekeeping amendment bringing the definition of "life bencher" into the definition section.

**The Chair:** Discussion? Seeing no further discussion, I shall put the question. All those in favour of committee motion 1? All those opposed? I declare committee motion 1 carried.

Committee motion 2, with explanation, please.

**Mr Martiniuk:** I move that subsection 1(3) of the bill be amended by adding the following definitions to section 1 of the Law Society Act:

"physician" means a member of the College of Physicians and Surgeons of Ontario or a person who is authorized to practise medicine in another province or territory of Canada; ('médecin')

"psychologist" means a member of the College of Psychologists of Ontario or a person who is authorized to practise psychology in another province or territory of Canada. ('psychologue')

This motion moves the terms "physician" and "psychologist" to the definition section. It's a housekeeping item.

**The Chair:** Further discussion? Seeing none, I shall put the question. All those in favour of committee motion 2, government motion? Those opposed? Committee motion 2 is carried.

Shall section 1 of the bill, as amended, carry? All those in favour? All those opposed? Section 1 has carried.

Section 2: Discussion on section 2? Seeing no discussion, I shall put the question on section 2. All those in favour of section 2? All those opposed? Section 2 of the bill is carried.

Unless there are specifics, I think we can move to sections 3, 4 and 5 of the bill. Any discussion? Seeing none, I shall put the question. All those in favour of sections 3, 4 and 5 of the bill? All those opposed? Sections 3, 4 and 5 of the bill have carried.

Section 6: Committee motion 3, a government motion, with explanation, please.

**Mr Martiniuk:** I move that section 6 of the bill be struck out and the following substituted:

"6. Section 12 of the act is repealed and the following substituted:

"Benchers by virtue of their office

"12(1) The following, if and while they are members, are benchers by virtue of their office:

"1. The Minister of Justice and Attorney General for Canada.

"2. The Solicitor General for Canada.

"3. Every person who has held the office of elected bencher for at least 16 years.

"Same: attorneys general

"(2) The following, whether or not they are members, are benchers by virtue of their office:

"1. The Attorney General for Ontario.

"2. Every person who has held the office of Attorney General for Ontario.

"Same

"(3) Subsection (2) does not apply to a person whose membership is in abeyance under section 31.

"Rights and privileges

"(4) Benchers by virtue of their office under subsection (1) or (2) have the rights and privileges prescribed by the bylaws but, except as provided in subsection (5), may not vote in convocation or in committees.

"Voting

"(5) The following voting rights apply:

"1. The Attorney General for Ontario may vote in convocation and in committees.



"2. Benchers by virtue of their office under paragraph 3 of subsection (1) or paragraph 2 of subsection (2) may vote in committees.

"Elected bencher's choice

"(6) An elected bencher who becomes qualified as a bencher under subsection (1) or (2) shall choose whether to continue in office as an elected bencher or to cease to hold office as an elected bencher and serve as a bencher under subsection (1) or (2).

"Same

"(7) If a bencher chooses under subsection (6) to continue in office as an elected bencher, he or she is eligible to be re-elected in any subsequent election of benchers without prejudice to his or her right to become a bencher under subsection (1) or (2) at any time so long as he or she is still an elected bencher."

It is with great pleasure that I move that motion, which could be termed the "Marion Boyd amendment," because it will permit Ms Boyd to be an honorary bencher due to her distinguished career as Attorney General for this province.

**Mr Peter Kormos (Welland-Thorold):** I'm going to support this amendment. You will recall that I exhorted the government to do this, and quite frankly they probably saved their bill as a result of having presented this amendment. I felt very strongly about it and Mr Martiniuk knows that. I want to thank him for responding to my very specific request. Although it is quite appropriate that this is the "Marion Boyd amendment," I anticipate that Ms Boyd won't be the last lay Attorney General. I'm going to support it. I appreciate the parliamentary assistant responding. I appreciate that my request to him was rather strong and forceful. I think it will serve the law society well.

**The Chair:** Further discussion?

**Mr Kormos:** Recorded vote, please.

### Ayes

Boushy, Castrilli, Kormos, Martiniuk, Rollins, Skarica, Bob Wood.

**The Chair:** Carried.

Shall section 6, as amended, carry? All those in favour? All those opposed? Section 6 is carried.

Is there any discussion on section 7, up to and including section 17? Shall section 7, up to and including section 17, of the bill carry? All those in favour? All those opposed? Sections 7, up to and including 17, have carried.

Section 18: committee motion 4, a government motion, with explanation, please.

1540

**Mr Martiniuk:** I move that section 30 of the Law Society Act, as set out in section 18 of the bill, be amended by adding the following subsection:

"Application for readmission following resignation

"(3) If a person resigned his or her membership in the society as a member or student member, the hearing panel

may, on the application of the person, make an order readmitting the person as a member or student member."

This is housekeeping. The right to reapply was inadvertently not included in the amendments.

**The Chair:** Further discussion? Seeing none, I shall put the question. All those in favour of committee motion 4, a government motion? All those opposed? Committee motion 4 has carried.

Shall section 18 of the bill, as amended, carry? All those in favour? All those opposed? Section 18 of the bill, as amended, has carried.

Sections 19 and 20: Discussion on sections 19 or 20? No discussion on sections 19 or 20. I shall put the question. All those in favour of sections 19 and 20 carrying? All those opposed? Sections 19 and 20 the bill have carried.

Section 21: committee motion 5, a government motion, with explanation, please.

**Mr Martiniuk:** I move that section 35 of the Law Society Act, as set out in section 21 of the bill, be amended by adding the following subsections:

"Test results

"(3) If the hearing panel makes an order under paragraph 18 of subsection (1), specific results of the tests performed in the course of treatment or counselling of the member or student member shall be reported pursuant to the order only to a physician or psychologist selected by the secretary.

"Report to secretary

"(4) If test results reported to a physician or psychologist under subsection (3) relate to an order made under paragraph 5 of subsection (1), the secretary may require the physician or psychologist to promptly report to the secretary his or her opinion on the member's or student member's compliance with the order, but the report shall not disclose the specific test results."

This follows the concerns raised by the privacy commissioner that there was absolutely no reason why the benchers would have to see the actual results of the test. Being laypersons, in the sense that they are not physicians or psychologists, they would rely upon the expertise of the physician or psychologist in making their evaluation. There was no purpose served in the actual test being revealed to them, or the results therefrom.

**Ms Annamarie Castrilli (Downsview):** I understand the intent of the government motion and quite frankly I applaud it. It's a matter that should have been addressed. I think it's great. I'm not sure that it's in the privacy commissioner's letter that I've seen.

But it raises an issue that I think the parliamentary assistant will address, if not now then later. There seems to be a whole series of government motions here that pertain to matters that were not presented to committee. I'd just like to understand from the parliamentary assistant how some of these motions came to be and if we're missing something here.

**Mr Martiniuk:** I am advised that this was a matter that rose out of the letters presented by the privacy commissioner. Perhaps I've neglected to point out that it

was also a matter raised by the Criminal Lawyers' Association of Ontario in their concerns.

**Ms Castrilli:** I'm delighted to hear that. As I say, I agree with the thrust of this. Certainly the Criminal Lawyers' Association did not appear before us and did not present materials. I'm just wondering what kind of discussions went on that resulted in a whole list of recommendations.

I view the committee process as a process to inform all members of potential amendments, potential difficulties, potential clarification of legislation. As I read the package today — please forgive me if I'm dealing with it in an omnibus way, but as I read the package this morning there were some concerns here that had never really been brought to this committee. They should have been here so that we could all have had the benefit of the wisdom of some groups, if indeed some groups were talking with the Attorney General and with members of the government, so that we could have been informed of the larger concerns.

**Mr Martiniuk:** Well, I can't disagree with that. If there is correspondence directed to the minister, however, I cannot distribute that. If it were distributed, for instance, to this committee or the clerk, anything of that kind would have been distributed to this committee.

**Mr Kormos:** That's an interesting comment because the PA had no qualms and didn't hesitate to distribute two letters from leaders on the bench that would support his position when it came to other matters when we were dealing with Bill 68, as I recall. It's an interesting comment that letters to the Attorney General about this legislation couldn't be disclosed. That's a new rule.

**Mr Martiniuk:** I didn't say they couldn't be disclosed. They are addressed to the minister. I've referred to them. I'll present the letter from the Criminal Lawyers' Association now that I've referred to it, if you wish. They're not secret in any manner, but they were addressed to the minister. It's not something I would ordinarily distribute to committee members since this is not addressed to committee members.

**Mr Kormos:** Chair, the minister doesn't read his own mail, any more than he does draft his own replies. I don't understand that argument. Sure, it's addressed to the Attorney General, whoever that might happen to be at the time, but I don't know why that puts it in a different category than any other material that the committee should be considering. If anything, it's a *fait accompli*. Obviously, it's not going to backtrack. But holy zonkers, in the future, please, shouldn't all this stuff be before the committee? There shouldn't be these kinds of secrets.

**The Chair:** As the committee Chair, a lot of organizations approach the Chair, as I'm sure Ms Castrilli knows, with the intent of passing information on, individuals not knowing the process. I don't intend to justify or clarify. I'd just say that from a Chair's position I regularly see information come through that I pass on to the clerk that is distributed through to ensure that all the committee has that. However, the information is coming in at certain times and this may be some of the process as well.

**Ms Castrilli:** I appreciate what you're saying, Chair. I'm not at all critical of the Chair. I understand fully that you have distributed all of the information that you had to give. I would expect that as Chair, and you've been a great Chair, very impartial and quite fair. That's not the issue I'm raising here.

In order for this committee to do its work well, we should be privy to all of the information that would help us to make an informed decision. As a general principle, what I'm looking at here is a number of recommendations that were never raised formally in this context. I'm not saying that the government shouldn't raise them; I just think there's an obligation to this committee to ensure that we're all fully informed.

1550

I happen to support this recommendation, that's not the issue, but it would have been fair to advise us that some of these concerns were on the table so that we could have turned our minds to them, not at 9 o'clock this morning — well, we got it at 11 o'clock this morning and with our busy legislative schedule, it's very difficult to think about some of these issues.

For the future, we ought to have some very serious guidelines as to what should or shouldn't be before the committee. I think we should err on the side of giving as much information as possible, bearing in mind that the government always has the majority. At the end of the day, they can go whatever they want. I think it would be incumbent on them in those circumstances in particular to ensure that we had all of the pertinent information.

**Mr Kormos:** I just want to join with Ms Castrilli in confirming that you have been a wonderful Chair, worth every penny of the \$10,000 or \$11,000 that you earn as the Chair in addition to your base salary of \$78,006, which brings you to a salary bracket of some \$89,006. I think you've been worth every penny of it, or at least almost every penny of it.

**The Chair:** Thank you, Mr Kormos, I think.

**Mr Toni Skarica (Wentworth North):** Nicest thing he ever said.

**Mr Martiniuk:** For the purpose of the record, I think you've raised an excellent point. They are matters but they are not addressed to this committee, and I will seek instruction. Since it's within the scope of the consideration of this committee, I can't disagree that it would be relevant, even though it was not directed to the committee per se. I will seek instructions and, in future, act accordingly. Thank you very much for your suggestion.

**Ms Castrilli:** Thank you for your response.

**The Chair:** Further discussion on committee motion 5? Seeing none, I shall put the question. All those in favour of committee motion 5? All those opposed? The motion is carried.

Committee motion 6, a government motion.

**Mr Martiniuk:** I move that section 37 of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

"Interpretation — 'incapacitated': members



"37(1) A member is incapacitated for the purposes of this act if, by reason of physical or mental illness, other infirmity or addiction to or excessive use of alcohol or drugs, he or she is incapable of meeting obligations as a member.

"Interpretation — 'incapacitated': student members

"(2) A student member is incapacitated for the purposes of this act if, by reason of physical or mental illness, other infirmity or addiction to or excessive use of alcohol or drugs, he or she is incapable of serving under articles or of participating in the bar admission course.

"Determinations under other acts

"(3) Subject to subsections (4) and (5), the hearing panel may determine that a person is incapacitated for the purposes of this act if the person has been found under any other act to be incapacitated within the meaning of that act.

"Conditions controlled by treatment or device: members

"(4) The hearing panel shall not determine that a member is incapacitated for the purposes of this act if, through compliance with a continuing course of treatment or the continuing use of an assistive device, the member is capable of meeting his or her obligations as a member.

"Same: student members

"(5) The hearing panel shall not determine that a student member is incapacitated for the purposes of this act if, through compliance with a continuing course of treatment or the continuing use of an assistive device, the student member is capable of serving under articles and of participating in the bar admission course.

"Same

"(6) Despite subsections (4) and (5), the hearing panel may determine that a person who is the subject of an application under section 38 is incapacitated for the purposes of this act if,

"(a) the person suffers from a condition that would render the person incapacitated were it not for compliance with a continuing course of treatment or the continuing use of an assistive device; and

"(b) the person has not complied with the continuing course of treatment or used the assistive device on one or more occasions in the year preceding the commencement of the application."

Subsections 37(1) and (2) define the term "incapacitated." Bill 53 provides that a member may be found to be incapacitated if, "by reason of physical or mental illness, other infirmity, addiction to or excessive use of alcohol or drugs, or any other cause, he or she is incapable of meeting obligations as a member." We have removed "or any other cause" as it broadened the definition too widely, it was felt.

Last, subsection (3) is amended to provide that a hearing panel may determine that a person is incapacitated if the person was found to be incapacitated under any other act. This motion responds to the concerns raised by the mental health legal committee by striking out the automatic presumption of incapacity. Then the other ones deal with students.

**The Chair:** Further discussion?

**Mr Kormos:** I'm concerned about subsections (4) and (5), which are effectively identical other than one dealing with a bar ad student and the other one dealing with a member of the law society, and I suppose in particular, "or the continuing use of an assistive device." Where did this amendment come from?

**Mr Martiniuk:** As a result of discussions with the law society.

**Mr Kormos:** The law society?

**Mr Martiniuk:** Between the ministry staff and the law society.

**Mr Kormos:** Here's part of the problem: I find it offensive. Let me tell you why. Obviously this is fresh stuff. We haven't been exposed to this before. It implies, for instance, that if, let's say, a deaf person uses a cochlear implant, then he or she can become acceptable in terms of not being incapacitated, if that in fact is an assistive device. That may not be the best example. It implies that persons with disabilities, unless they have those particular devices, are presumed or are suspected of being incapacitated. Do you hear what I'm saying? Especially the part about assistive devices implies something that makes me very uncomfortable about persons with disabilities and an assumption about their incapacity.

I wish we had a chance to hear from the law society to see whether that reflects what they had in mind. I hope I'm getting my message across to you. I appreciate your deletion of "or other causes" from subsection (1) but I'm going to find it really difficult to support this. Could you respond? This is very troublesome. I'm winging it a little bit because I'm responding to this without a whole lot of preparation, I concede, but there is something very troubling there about "continuing use of an assistive device." I think I know what assistive devices are and I think I know how they're utilized. Therefore, I think I know what the inference to be drawn here is, a *prima facie* inference about persons with disabilities, be they blind people, deaf people, or other disabilities. It is suggesting that somehow the use of an assistive device, that effort to normalize them, is critical before they can become acceptable, and I reject that. I reject that entirely.

**1600**

I suggest to you that blind people, deaf people, all sorts of persons with any number of disabilities, some may choose to use assistive devices, others may choose not to, from their outlook, but the mere fact that some will choose to use an assistive device doesn't put the others in a position of incapacity.

**The Chair:** Further discussion?

**Ms Castrilli:** If the parliamentary assistant wants to respond to that first, I'm willing to defer.

**Mr Martiniuk:** There's a different way of looking at it. First of all, a person has to be suspected of being incapacitated to even go through the process. There is no presumption. The fact that a person may have a disability or, for that matter, is abusing a substance, is not *prima facie*. There's no presumption in any way that that person

is incapacitated. There would have to be a complaint and a hearing as to the person's actions; not the behaviour or their end result, not who they are and what their ailment is. So I don't necessarily take it as a slur. That certainly isn't the intent, as you know, Mr Kormos.

**Mr Kormos:** I hope it isn't. If I may, let's leave the alcohol and drugs out of this. I may not have as complete an understanding of this as I should, but I can't think of assistive devices that aren't used other than by persons who don't have all of the characteristics of other people. I hear what you're saying, but then why is it necessary to put that in there? This doesn't have to be in there at all. Subsections (4) and (5) don't have to be in there at all if incapacity is the first hurdle, the first step. If I'm an alcoholic and I'm in a program, then I'm not incapacitated, because presumably I'm not using alcohol to the point where it interferes with the practice. If I'm a drug addict and I'm on, let's say, methadone, then I'm not incapacitated. So your argument applies and there's no need for subsections (4) or (5), if what you're saying is the prevailing argument.

Clearly, you've chosen to put in subs (4) and (5) — because (4) and (5) are actually identical — but you've also thrown in the issue of assistive devices. I think that speaks to persons with disabilities and I'm not sure it says what the government wants to say. It certainly doesn't say what I want to say about persons with disabilities.

**Ms Castrilli:** Here's the problem, and it refers back to something I said before. We received these amendments at 11 o'clock this morning and we've been in the Legislature for a great portion of the time since. There's been very little time to really think about these particular amendments. We've had no presentation on this issue at all. It comes as a surprise and I think we need the time to digest these issues.

Let me just say with respect to my friend Mr Kormos, I have a different interpretation of this particular section. I don't read it as he does. I read it as saying that "incapacitated" means that you have a physical or mental illness or other infirmity which is defined here, and then out of an abundance of caution, you want to make sure that you don't include in that definition people who are being helped by assistive devices. That's how I read it.

I'm quite prone to accept the parliamentary assistant's description of this because that's how I read it, but the problem is that we have no evidence that's come before the committee. We've not been able to ask the questions. We've had virtually no time to review it, and I'm concerned that we're going to go through this with every single amendment. It could have been avoided had we had the ability to ask the questions, to get the answers, to have some time to review these amendments.

But I'll have to disagree with my friend Mr Kormos on this one because I don't read it in quite the same way. He says he may be wrong because he hasn't had time to think about it, and I think I may be wrong because I haven't had time to think about it.

**Mr Kormos:** I hear what the PA is saying. I'm not in any way suggesting or trying to suggest that there's any-

thing sinister about his introduction of this. All I'm saying is I have real concerns about utilization of the phrase or language "the continuing use of an assistive device" and the implications. I don't quarrel with what the PA says is sought to be achieved here or is sought here in terms of the goal, I don't disagree with that, but I'm troubled, I tell you, by the language. You see, here we are. This committee's compelled to deal with this today.

I'm not trying to put words in Mr Martiniuk's mouth, by any stretch, but I've got a feeling that he's thinking about this thing, "Gosh, maybe this isn't the best possible articulation of this either." I'm not sure of that. As I say, I'm just reading his body language here. I'm just reading facial expressions, and I appreciate his concern and interest about it. I wish we could defer this. I wish for a lot of things, I suppose, but it's unfortunate.

You see, Mr Martiniuk — and I'm not going to belabour this — I don't think this amendment was written last night. With all due respect, I don't think it was written last night. I appreciate that some of the cut and thrust here is sometimes not that witty and it's not necessarily all that germane to the committee process, but the whole prospect of the government coming clean at the onset — because I don't think this was written last night. I think this was probably written before we started the committee or at least at the onset or the beginning of the committee. We talked about this. If the government was going to deal with certain amendments, say so upfront so that we could move on from there and wouldn't belabour the point during the course of talking to presenters before this committee.

The difficulty I have with this amendment now I think speaks to that. It's just unfortunate that this couldn't have been produced earlier on. I would have had a chance to vet it past people whose judgment I hold in high regard with respect to these sorts of issues and had a better handle on it so that I could say one way or the other that I think it stinks or it isn't offensive the way I suspect it might be. So there we are.

Unfortunately, I'm not going to vote for this amendment because I have grave concerns about that language. I suspect it will pass because — oh, oh, you better watch it. You better whip your people in here, but at the moment you've got a majority in here.

**Mr E.J. Douglas Rollins (Quinte):** I think we're all right.

**Mr Kormos:** At the moment.

**Mr Martiniuk:** One thing I do appreciate, if the three of us were perhaps the House leaders, we wouldn't be sitting here in such a rushed capacity today. I'm not going to justify the rush, because it's unfortunate. I do not, however, interpret it as you do. I think it's clear that the incapacity is defined right in sub (1) and it in no way is a reflection on anybody with any physical or mental disability. So we will support it.

**The Chair:** Further discussion? Seeing none, I shall put the question on committee motion 6. All those in favour? Those opposed? I declare committee motion 6 carried.



Committee motion 7, an official opposition motion, Ms Castrilli, with explanation, please.

**Ms Castrilli:** I move that subsection 39(1) of the Law Society Act, as set out in section 21 of the bill, be amended by adding at the end "if the hearing panel has reasonable grounds to believe that the member or student member is or has been incapacitated."

I want to comment on this motion and preface some of the others that will come. I've spent considerable time in this committee trying to elicit some responses to concerns that were voiced by the privacy commissioner in a letter dated October 2, 1998. I've made it very clear that I view the privacy commissioner, as indeed the privacy commissioner is, as an office of the Legislative Assembly, and the communications with that office are not communications that we can afford to dismiss.

Mr Strosberg, the treasurer of the law society, yesterday presented a letter dated December 3 — I guess it was received December 7 and presented to us yesterday afternoon — which states again for the record that the privacy commissioner believes that the protection of personal information be enshrined in legislation. That was the proposal that was made according to the commissioner herself to the Deputy Attorney General, so the letter says. It's a letter of December 3 to Mr Strosberg.

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With that letter in mind, I don't really think we can ignore the comments and views that are expressed in that October 2 letter. Therefore, there is a series of motions that are presented here from our party which reflect those particular concerns. One of them is reflected here, and that is that a hearing panel, because it's dealing with such critical rights of an individual, should not be able to simply conduct a hearing without it being satisfied that there are reasonable grounds to believe that an individual before the hearing panel who is the subject of a complaint is not incapacitated.

That's the intent of this motion. It is, as I say, a preface to other motions that will come. I trust that the members of the committee will look at the recommendations of the privacy commissioner very, very seriously. I know you have a majority here, but I think it's incumbent on us in this committee to ensure that the opinions of third parties — not the lawyers and not the organizations that represent lawyers but a third party who is above all the parts, who has gone to considerable lengths to review the legislation and finds it wanting. We've got to consider those recommendations. So I put it to the committee that you entertain this motion very seriously.

**Mr Kormos:** I find this interesting. Once again some direction would be helpful. What, if anything, is the standard for the hearing panel to make its determination without a standard like this?

**Mr Martiniuk:** First, before you can even have a hearing, the secretary must reach a conclusion in his mind that he should have reasonable grounds before even starting the investigation. That safeguard is built into the amendments.

**Mr Kormos:** Fair enough. So be it. But when the hearing panel considers a motion, an application to require somebody to be examined, what is the standard? What is the test they utilize in considering that application? I don't know. There's an implication here that there's some sort of hearing by the hearing panel, that they have to consider some kind of submission.

**Mr Martiniuk:** Yes.

**Mr Kormos:** Without a test being expressed, what test then does the hearing panel utilize in the course of responding to that application or motion?

**Mr Martiniuk:** It's as I expected. If the act is silent, it would be the balance of probabilities, the usual civil requirement.

**Ms Castrilli:** Mr Kormos has pointed out the fact, and I've said it before, that we've had very little time to really consider some of these amendments, but the privacy commissioner has spent time reviewing this legislation. I would refer the parliamentary assistant to the second page of the privacy commissioner's letter of October 2, in which it's clearly stated, and I quote:

"...we suggest that the hearing panel prescribed in the bill be required to have reasonable and probable grounds before ordering a medical or psychological examination to determine a member's capacity. Additionally, the member should be able to make submissions on the issue before he or she is required to be examined. This is the approach taken in the Regulated Health Professions Act. Similar standards should be met before a member is obliged to undergo 'testing and treatment...', particularly if the law society wishes to collect the results of the testing."

What does this say to us? It says a number of things. It says, first of all, that the privacy commissioner doesn't see a process, doesn't see any qualifications with respect to whether there would be reasonable or probable grounds; doesn't see any kind of due process to allow the individual to dispute, debate or comment on whether the determination to be made is reasonable. Third, what this says to us is, "Look, other professions aren't regulated in this way." The very same provisions under the health professions act require a reasonable and probable ground before decisions of this magnitude can be taken. I think that's pretty clear on the face of it.

Mr Kormos and I haven't had the time to discuss this or review this. Obviously those who are charged with looking at these kinds of legislation feel that there's something wanting here. So there is no test, there is no process, and other professions don't deal with it in this fashion. That's what the privacy commissioner's telling us and that's what this amendment is, in part, trying to address.

**Mr Kormos:** I'm going to support the amendment because I think it sets out the test and I think that's appropriate. I think the PA should consider adopting it as well. He says there's an assumed test in the context of silence about the test. I'd rather see it articulated.

**The Chair:** Further discussion? Seeing no further discussion, I shall put the question. Shall committee

motion 7 carry? All those in favour? All those opposed? I declare committee motion 7 defeated.

Committee motion 8, a government motion.

**Mr Martiniuk:** I move that subsection 39(4) of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

"Questions and answers

"(4) The member or student member shall answer the questions of the examining physicians or psychologists that are relevant to the examination.

"Same

"(4.1) The answers given under subsection (4) are admissible in evidence in the application, including any appeal, and in any proceeding in court arising from the application, but are not admissible in any other proceeding."

In the original amendments as proposed, it wasn't clear whether the answers could be used in appeals. This clarifies that issue.

**The Chair:** Further discussion? Seeing none, I shall put the question on committee motion 8. All those in favour of committee motion 8? All those opposed? I declare committee motion 8 carried.

Committee motion 9, a government motion.

**Mr Martiniuk:** I move that subsection 39(6) of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

"Appeal

"(6) A party to the proceeding may appeal an order under this section or a refusal to make an order under this section to the appeal panel.

"Grounds: parties other than society

"(7) A party other than the society may appeal under subsection (6) on any grounds.

"Grounds: society

"(8) The society may appeal under subsection (6) only on a question that is not a question of fact alone.

"Time for appeal

"(9) An appeal under subsection (6) shall be commenced within the time prescribed by the rules of practice and procedure."

This reflects back to the debate we had in regard to Ms Castrilli's motion, item 7. Even though we feel there are sufficient safeguards built into the section, we didn't feel that the person who is under scrutiny should have the right of appeal both in law and in fact as an additional safeguard.

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**Ms Castrilli:** I'm grateful for the PA's explanation. I will say that there is a motion later on that we put forward to address some of those issues. I will be glad to support this motion. I think the bill was extremely deficient in the area of appeals. This is quite a welcome amendment.

**Mr Kormos:** I support the amendment, but I point out subsection (7) here, "any grounds." Isn't "ground" the singular of "grounds" plural?

**Ms Castrilli:** Is that a legal question or a semantic question?

**Mr Kormos:** Well, it's English language; I don't know.

**Mr Martiniuk:** I'm sorry, I missed your question.

**Mr Kormos:** Well, you spent so much time looking for the answer, you missed the question.

**Mr Martiniuk:** No, I'm not looking for the answer; I was looking for —

**Mr Kormos:** In subsection (7), isn't "ground" the singular of "grounds"?

**Mr Martiniuk:** I would assume it would be "ground," Mr Kormos. That's a collective term, is it not?

**Mr Kormos:** Speed it up now. Otherwise, the legislative counsel committee will have to labour over this pursuant to that schedule under Bill 25, schedule C, if I recall it.

**Mr Martiniuk:** It's consistent with the drafting. It's already in the bill as plural.

**Mr Kormos:** Because they screwed up in the past, we're going to screw up again?

**Mr Martiniuk:** Yes. That's called "tradition," Mr Kormos.

**Mr Rollins:** That's why we have lawyers, Peter. That's why lawyers exist.

**Mr Kormos:** I want my objection to this noted. Let me tell you, on Highway 406 going north up to St Catharines, if you travel west off the 406, there's the Howell Family Pumpkin Farm. It's a little bit of an attraction for school kids.

The MTO, as you know, charges money for signs now, when you want signage up on the 400 series highways. The MTO charged these people several hundred bucks to put up a sign that says "Howell Family Pumpkin Farm," except the dumb people who painted this sign and charged these people money for it misspelled "pumpkin." They spelled it p-u-m-k-i-n. There is it, in both directions, northbound and southbound on the 406. All these buses of school kids being taken to the Howell Family Pumpkin Farm are being misled by this government, specifically by the Ministry of Transportation, which charged to put up a misspelled road sign.

**The Chair:** I don't see how that fits in with the amendment.

**Mr Kormos:** But you know, in this context, misleading isn't necessarily out of order, is it? It's quite factual. It's going to be the Quayle effect.

**The Chair:** It's duly noted, Mr Kormos. Further discussion on committee motion 9, excluding pumpkins? Seeing none, I shall put the question. All those in favour of committee motion 9? All those opposed? I declare committee motion 9 carried.

Committee motion 10, a government motion.

**Mr Martiniuk:** I move that subsection 40(1) of the Law Society Act, as set out in section 21 of the bill, be amended by striking out "shall" in the fifth line and substituting "may."

I think that is self-explanatory.

**The Vice-Chair (Mr E.J. Douglas Rollins):** Further discussion? No discussion? All those in favour of the government amendment, motion 10? Opposed? Carried.



Government motion 11.

**Mr Martiniuk:** I move that section 40 of the Law Society Act, as set out in section 21 of the bill, be amended by adding the following subsections:

“Test results

“(3) If the hearing panel makes an order under paragraph 5 of subsection (1), specific results of tests performed in the course of treatment or counselling of the member or student member shall be reported pursuant to the order only to a physician or psychologist selected by the secretary.

“Report to Secretary

“(4) If test results reported to a physician or psychologist under subsection (3) relate to an order made under paragraph 2 of subsection (1), the secretary may require the physician or psychologist to promptly report to the secretary his or her opinion on the member's or student member's compliance with the order, but the report shall not disclose the specific test results.”

This is in continuation of our former amendment, in which we wanted to ensure that test results were not available to lay members of the law society.

**The Vice-Chair:** Any further discussion on government motion 11? If not, all in favour of government motion 11? Opposed? Carried.

Government motion 11.

**Mr Martiniuk:** I move that section 44 of the Law Society Act, as set out in section 21 of the bill, be amended by adding the following subsections:

“Test results

“(3) If the hearing panel makes an order under paragraph 9 of subsection (1), specific results of tests performed in the course of treatment or counselling of the member shall be reported pursuant to the order only to a physician or psychologist selected by the secretary.

“Report to Secretary

“(4) If test results reported to a physician or psychologist under subsection (3) relate to an order made under paragraph 5 of subsection (1), the secretary may require the physician or psychologist to promptly report to the secretary his or her opinion on the member's compliance with the order, but the report shall not disclose the specific test results.”

Again, that's self-explanatory.

**The Vice-Chair:** Any discussion? All those in favour of 11A? Opposed? Carried.

Liberal motion 12, Ms Castrilli.

**Ms Castrilli:** I move that section 48 of the Law Society Act, as set out in section 21 of the bill, be struck out.

We've had very little time for this, but let me explain to members what this amendment is attempting to do. Under the amendments we have before us, there are a number of summary orders that can be made against an individual practitioner or student member of the law society. There may be a suspension that ensues. I read 48 as allowing summary revocation of membership if, after 12 months, the particular order is still in effect.

The concern we have is that this happens without notice. I urge members of the committee to realize that there really should be some sort of process here, that you shouldn't be able to summarily dismiss a member without at least sending out a notice that that individual may be struck from the membership of the law society. That's the intent here. It may not be the most felicitous way of addressing this particular concern. As I said, we've had very little time, but that's the intent of the motion.

**Mr Kormos:** I know lawyers who advertise by having their names listed in the OR. Then they pay up, and it's all done at no cost to them other than the penalty fee. I understand what's being sought here. I wonder if the PA could comment on the discretion of a benchler. It's one thing to revoke membership, another thing to disbar. Is this really what the PA has in mind?

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**Ms Castrilli:** Yes, that's what it sounds like.

**Mr Kormos:** A single member, unrestricted? What if somebody in the law society didn't like you, Mr Martiniuk? What if they had a grudge? What if they knew you and for a mere oversight on your part, for instance, in paying your dues you got disbarred? Is that the type of power you wanted to pass on?

**Mr Martiniuk:** One can reapply. It's not a problem.

**Mr Kormos:** How does one go about reapplying after you've been disbarred?

**Mr Martiniuk:** Right now, you have to go to convocation for all of these things. This is what we're trying to avoid, to give the law society some more flexibility in the way they manage it. There are many lawyers who no longer practise law, such as myself, Mr Kormos, and I may not have any interest in practising law or being a member of the law society.

**Mr Kormos:** What are you going to do after the next election?

**Mr Martiniuk:** I'll be right here, Mr Kormos. Both of us, I'm sure, will be right here.

**Ms Castrilli:** You're not excluding me, are you?

**Mr Martiniuk:** No. I was talking to Mr Kormos.

**The Vice-Chair:** Any further discussion on section 12? All those in favour of section 12? All those opposed to the Liberal motion? Motion defeated.

Government motion 13, Mr Martiniuk.

**Mr Martiniuk:** I move that subsection 49.3(1) of the Law Society Act, as set out in section 21 of the bill, be amended by striking out “shall” in the second line and substituting “may.”

This arose out of the submission of the Canadian Bar Association yesterday.

**The Vice-Chair:** Any further discussion?

**Mr Kormos:** I'm just indicating that I'd support it.

**The Vice-Chair:** All those in favour of government motion 13? All those opposed? The motion carries.

Motion 14, a Liberal motion, Ms Castrilli.

**Ms Castrilli:** I move that subsections 49.3(1), (2) and (3) of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

“Investigations: members' conduct

"49.3(1) Subject to section 49.5, the secretary may require an investigation to be conducted into a member's conduct if the secretary is satisfied that there are reasonable grounds for believing that the member may have engaged in professional misconduct or conduct unbecoming a barrister or solicitor.

"Investigations: student members' conduct

"(2) Subject to section 49.5, the secretary may require an investigation to be conducted into a student member's conduct if the secretary is satisfied that there are reasonable grounds for believing that the student member may have engaged in conduct unbecoming a student member.

"Investigations: capacity

"(3) Subject to section 49.5, the secretary may require an investigation to be conducted into a member's or student member's capacity if the secretary is satisfied that there are reasonable grounds for believing that the member or student member may be or may have been incapacitated."

As I indicated before one of the other amendments we presented, this arises from some of the concerns of the privacy commissioner. There really has to be a test of reasonableness before significant decisions are embarked upon. I think the motion is self-explanatory.

**Mr Martiniuk:** One thing I didn't know — and Mr Kormos no doubt would be aware of it, because he does criminal work and I don't, or haven't for the last 20 years — was that the Supreme Court of Canada has interpreted "reasonable grounds" and "reasonable and probable grounds" as being one and the same. I see no reason why we have to inject criminal onuses into what is essentially the regulation of a profession for the public good. I think it's too high a standard.

**Mr Kormos:** I should correct the PA. I have had recent experience in the criminal courts, but not as counsel.

**Mr Martiniuk:** I was not referring to that, Mr Kormos.

**Ms Castrilli:** I want to say again that I accept the PA's position, but it's not the position of the privacy commissioner, and it is not unlike other professions and the standards that are imposed on them. This would not be an anomaly. In fact, it would be consistent with other legislation governing other professions.

**Mr Kormos:** I have sympathy for the position expressed, but what prompts an investigation? In the bill as presented, the standard is pretty low, because it combines "receives information suggesting" and it doesn't say that the member "has engaged in" but that the member "may have engaged in," so it seems to lower it even further. I'm not quarrelling with that, quite frankly. In view of the latitude allowed the law society as to the type of investigation it embarks on and in view of the goal here of protecting the public from lawyers who may be less than competent or less than scrupulous, in this instance, although sympathetic to Ms Castrilli's argument, I can very much live with the bill as presented.

**The Vice-Chair:** Any further discussion on Liberal motion 14? If not, I'll call for the support of Liberal motion 14. All those in favour? All those opposed? I declare it defeated.

Next is government motion 15, Mr Martiniuk.

**Mr Martiniuk:** I move that section 49.3 of the Law Society Act, as set out in section 21 of the bill, be amended by adding the following subsection:

"Powers

"(1.1) A person conducting an investigation under subsection (1) may require the person under investigation and people who work with the person to provide information that relates to the matters under investigation and, if the secretary is satisfied that there is a reasonable suspicion that the person under investigation may have engaged in professional misconduct or conduct unbecoming a barrister or solicitor, the person conducting the investigation may,

"(a) enter the business premises of the person under investigation between the hours of 9 am and 5 pm from Monday to Friday or at such other time as may be agreed to by the person under investigation; and

"(b) require the production of and examine any documents that relate to the matters under investigation, including client files."

In this, we are hoping to meet some of the concerns raised at the hearings and we have introduced for the first time to the bill a two-step process, the second, where client files are being examined, being a higher basis than the initial investigation.

**The Vice-Chair:** Any discussion on government motion 15?

**Ms Castrilli:** Just a question. Where did this amendment come from? We may ask this question from time to time. I accept your explanation, but I'd just like to know the origin.

**Mr Martiniuk:** We have, in Kathleen and others, a very creative staff with the ministry. However, the creativeness arose because of the concerns, which I think may have had some grounding, raised by these committee members and by the presenters before this committee.

**Ms Castrilli:** I'm glad to hear that we have such creative staff.

**The Vice-Chair:** Any further discussion on government motion 15? If not, all those in favour? All those opposed? Government motion 15 carries.

Government motion 16.

**Mr Martiniuk:** I move that subsection 49.3(2) of the Law Society Act, as set out in section 21 of the bill, be amended by striking out "shall" in the second line and substituting "may."

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**The Vice-Chair:** Any discussion of government motion 16? If not, I'll call the question. All those in favour? All those opposed? The motion carries.

Government motion 17.

**Mr Martiniuk:** I move that section 49.3 of the Law Society Act, as set out in section 21 of the bill, be amended by adding the following subsection:



### "Powers

"(2.1) A person conducting an investigation under subsection (2) may require the person under investigation and people who work with the person to provide information that relates to the matters under investigation and, if the secretary is satisfied that there is a reasonable suspicion that the person under investigation may have engaged in conduct unbecoming a student member, the person conducting the investigation may,

"(a) enter the business premises of the person under investigation between the hours of 9 am and 5 pm from Monday to Friday or at such other time as may be agreed to by the person under investigation; and

"(b) require the production of and examine any documents that relate to the matters under investigation, including client files."

This applies the same standard to students.

**The Vice-Chair:** Is there any discussion of government motion 17? If not, all those in favour of government motion 17? All those opposed? Motion carried.

Government motion 18.

**Mr Martiniuk:** I move that subsection 49.3(4) of the Law Society Act, as set out in section 21 of the bill, be amended by striking out "this section" in the second line and substituting "subsection (3)".

**The Vice-Chair:** Any discussion of this one? All in favour? Opposed? The motion is carried.

Government motion 19.

**Mr Martiniuk:** I move that subsection 49.5(1) of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

"Investigations of benchers and society employees

"(1) A reference in section 49.3 to the secretary shall be deemed, with respect to any matter that concerns the conduct or capacity of a bencher or employee of the society, to be a reference to the treasurer."

This is just a matter of renumbering in the act, if I understand it.

**The Vice-Chair:** Any further discussion of government motion 19? If not, all those in favour? Opposed? Government motion 19 carries.

Government motion 20.

**Mr Martiniuk:** I move that section 49.8 of the Law Society Act, as set out in section 21 of the bill, be amended by,

(a) striking out "section 49.2, 49.3 or 49.4" in the second line of subsection (1) and substituting "section 49.2, 49.3, 49.4 or 49.15"; and

(b) striking out "section 49.2, 49.3 or 49.4" in the fourth line of subsection (2) and substituting "section 49.2, 49.3, 49.4 or 49.15."

**The Vice-Chair:** Any discussion of government motion 20? All those in favour? All those opposed? Government motion 20 carries.

Liberal motion 21.

**Ms Castrilli:** I move that section 49.8 of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

"Disclosure despite privilege

"49.8(1) A person who is required under section 49.2, 49.3 or 49.4 to provide information or to produce documents shall comply with the requirement even if the information or documents are privileged or confidential.

### "Notice

"(2) If a person provides information or produces documents under section 49.2, 49.3 or 49.4 that are privileged or confidential,

"(a) the person who provided the information or produced the documents shall promptly inform the person who is entitled to claim the privilege or the right to confidentiality that the information has been provided or the documents have been produced; and

"(b) the person to whom the information was provided or to whom the documents were produced shall promptly inform the person who is entitled to claim the privilege or the right to confidentiality that the information has been provided or the documents have been produced.

### "Exception

"(3) Clause (2)(b) does not apply if,

"(a) the person who provided the information or produced the documents has complied with clause (2)(a); or

"(b) the person to whom the information was provided or to whom the documents were produced does not know that the information or documents are privileged or confidential or does not know the identity or whereabouts of the person who is entitled to claim the privilege or the right to confidentiality.

### "Delivery of documents to court

"(4) If documents that are privileged or confidential are produced under section 49.2, 49.3 or 49.4 and, pursuant to section 49.9, the documents are in the custody or control of the person to whom they were produced, the person who is entitled to claim the privilege or the right to confidentiality may require the person to whom the documents were produced to deliver the documents to the Ontario Court (General Division) and the person to whom the documents were produced shall promptly comply with the requirement.

### "Examination or use

"(5) Documents that are required to be delivered to the Ontario Court (General Division) under subsection (4) shall not be examined or copied by the person to whom the documents were produced except as authorized by an order of the court made under subsection (6).

### "Application to court

"(6) On application, the Ontario Court (General Division) may make an order,

"(a) directing that documents required to be delivered to the court under subsection (4) be returned to the person who produced them or be given to the person to whom they were produced;

"(b) authorizing the person to whom the documents were produced to examine or copy the documents.

### "Terms and conditions

"(7) An order under subsection (6) may be made subject to such terms and conditions as the court considers appropriate.

"Admissibility despite privilege

"(8) Despite clause 15(2)(a) and section 32 of the Statutory Powers Procedure Act but subject to subsection (5) and to any order made under subsection (6), information provided and documents produced under section 49.2, 49.3 or 49.4 are admissible in a proceeding under this act even if the information or documents are privileged or confidential.

"Privilege preserved for other purposes

"(9) Subsections (1) and (8) do not negate or constitute a waiver of a privilege except as provided in those subsections."

What this amendment seeks to do is to address some of the concerns of the privacy commissioner as to the kinds of standards and regulations that there ought to be with regard to privilege and confidentiality. We've heard from the privacy commissioner that this is a concern. We heard it on October 2. We heard it again in her letter of December 3, in which she said she advised the Attorney General that she had written about the importance of enshrining confidentiality and privilege in the legislation.

I hope the members of government will consider it. I should say that in the event you do not, I hope this would feature very prominently in discussions you may have with the privacy commissioner and that the law society may have with the privacy commissioner in terms of a set of standards that would protect privilege and confidentiality, which is a real deficiency under this legislation.

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Let me just add one final thing. I appreciate that section 21 is a very delicate section in that it's trying to address the interests of various parties. It's a question of striking the right balance. The privacy commissioner has said to us that the balance has not been struck right in section 21, so this is an attempt to try and strike that balance. I hope you have that in mind as you vote for this legislation and in any further discussions that may be had following the adoption of the legislation.

**The Vice-Chair:** Any further discussion? If there's no discussion, we'll call Liberal motion 21 and 21a; they're numbered together. All those in favour? All those opposed? I declare the motion defeated.

Item 22 is a government motion.

**Mr Martiniuk:** I move that subsection 49.8(3) of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

"Privilege preserved for other purposes

"(3) Subsections (1) and (2) do not negate or constitute a waiver of any privilege and, even though information or documents that are privileged must be disclosed under subsection (1) and are admissible in a proceeding under subsection (2), the privilege continues for all other purposes."

Our intent is to ensure and strengthen the rationale throughout the act that any documentation received by the law society is privileged.

**Ms Castrilli:** I will be supporting this motion. While I don't think it's an absolute response to the concerns the privacy commissioner put forward, it does address some of

those concerns, and I commend the government for at least paying attention.

**The Vice-Chair:** Any further discussion? If there's no further discussion, government motion 22: All those in favour? All those opposed? The motion is carried.

Government motion 23.

**Mr Martiniuk:** I move that subsection 49.9(1) of the Law Society Act, as set out in section 21 of the bill, be amended by striking out "sections 49.2, 49.3 or 49.4" in the second line and substituting "sections 49.2, 49.3, 49.4 or 49.15."

It's housekeeping.

*Bells rang in the House.*

**The Vice-Chair:** I'm going to ask for a 10-minute recess.

**Ms Castrilli:** Is there a vote?

**The Vice-Chair:** No, it's a quorum call.

**Mr Kormos:** Wait a minute. The Chair's calling a recess?

**The Vice-Chair:** This is what I was told I had the privilege of being able to do.

**Mr Kormos:** By your members?

**Clerk of the Committee (Ms Tonia Grannum):** Under the standing orders, the Chair has the authority to recess if the bells are going, because you really don't know if it's for a division or a quorum call.

**Mr Kormos:** Chair, the TV screen tells us whether it's a quorum or a division call. If we were in a room where there wasn't a TV, it would be different. We know we have to break if there's a vote. We don't break if there's a quorum call. Your whip has an obligation to keep 20 people in there. Let him or her do it. Quite frankly, the Chair, by responding to a quorum call, is going well beyond the rule of non-partisan chairing.

**The Vice-Chair:** Fine. I'm sorry if I misspoke and called the recess. I was told that I had the pleasure of calling a recess, so I exercised that pleasure. The recess is now over. Is that all right? Or do you want to wait for 10 minutes? We have to wait for 10 minutes?

**Mr Kormos:** You haven't got the power to call a recess for a mere quorum call, Chair.

**Mr Martiniuk:** How do we resolve the problem we have now?

**The Vice-Chair:** That's the question.

**Ms Castrilli:** If I may, if I heard you correctly, you said, "I would like to ask for a recess." I don't recall us responding, so it was not a decision on your part to call a recess but you actually put it to the committee. Maybe if you'd like to proceed with that, we could give you some direction as to how we would vote on it.

**The Vice-Chair:** If that's the case, I put it to the committee: Do we need a recess?

**Interjections:** No.

**Mr Kormos:** Mind you, Chair, any member can call a recess on the call for a vote. A clever government backbencher would have, upon the calling of a vote, asked for a recess and run and done the quorum.

**Mr Martiniuk:** Thanks for the idea.



**The Vice-Chair:** We are at the present time on government motion 23. Is there any further discussion? If not, all those in favour? All those opposed? The motion carries.

The next is Liberal motion 24.

**Ms Castrilli:** I move that section 49.9 of the Law Society Act, as set out in section 21 of the bill, be amended by adding the following subsection:

“Certain parts of documents not to be copied

“(3) This section does not authorize the copying of any part of a document that,

“(a) in the case of a document examined under section 49.2, is not a financial record maintained in connection with the practice of the member or group of members and is not relevant for the purpose of understanding or substantiating a financial record maintained in connection with the practice of the member or group of members;

“(b) in the case of a document examined under section 49.3, does not relate to the matters under investigation; or

“(c) in the case of a document examined under section 49.4, does not relate to the matters under review.”

I think the motion is self-evident. What we don't want to do is fetter the power of the law society to investigate, but we also want to make sure we protect information that is not relevant to any proceedings that the law society may undertake. May I say that this really builds on the government's motion 22. It's almost a companion. It simply specifies the kinds of documents that ought not to be copied.

**Mr Kormos:** I think this is a reasonable amendment and we'll be supporting it.

**The Vice-Chair:** All those in favour of Liberal motion 24? All those opposed? The motion is defeated.

Government motion 25.

**Mr Martiniuk:** I move that subsection 49.10(1) of the Law Society Act, as set out in section 21 of the bill, be amended by,

(a) striking out “require” in the first line of clause (a) and substituting “authorize or require”; and

(b) striking out “subsections 49.3(4) or 49.4(2)” in the third and fourth lines of clause (c) and substituting “subsections 49.3(1.1), (2.1) or (4) or 49.4(2).”

**The Vice-Chair:** Any further discussion on government motion 25? If not, all those in favour? All those opposed? Motion 25 carries.

Government motion 26.

**Mr Martiniuk:** I move that subsections 49.10(10) and (11) of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

“Seizure despite privilege

“(10) An order under this section may authorize the seizure of a thing even if the thing is privileged or confidential.

“Admissibility despite privilege

“(11) Despite clause 15(2)(a) and section 32 of the Statutory Powers Procedure Act, a thing seized under this section is admissible in a proceeding under this act even if the thing is privileged or confidential.

“Privilege preserved for other purposes

“(12) Subsections (10) and (11) do not negate or constitute a waiver of any privilege and, even though a thing that is privileged may be seized under subsection (10) and is admissible in a proceeding under subsection (11), the privilege continues for all other purposes.”

1700

**Ms Castrilli:** The objections that I've made elsewhere, that confidentiality and privilege are not protected in this legislation, speak volumes again in this motion. I have nothing further to add other than what I said before. If the government continues with this, I hope that there will be some very strong discussions with the privacy commissioner to ensure that there are very clear guidelines as to privilege and confidentiality. This kind of provision worries me. I don't know that this constitutes much change from what's in the bill before us, but in general this is exactly the kind of issue that the privacy commissioner has addressed, and I don't think the government has addressed those concerns.

**The Vice-Chair:** Any further discussion on government motion 26? All those in favour of government motion 26? All those opposed? I declare the motion carried.

Liberal motion 27.

**Ms Castrilli:** I move that section 49.12 of the Law Society Act, as set out in section 21 of the bill, be amended by adding the following subsections:

“Offence

“(4) A person who knowingly contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

“Same

“(5) Subsection (4) does not apply to a contravention of subsection (1) that is authorized by section 49.13.”

This is one of two motions that we're putting forward — the other one is 29 — which deal with the issue of offences in the event privilege and confidentiality are breached. I think this is one of the shortcomings of the act. It's obviously indicated as a shortcoming in the privacy commissioner's view. We've attempted here to ensure that that particular deficiency is addressed.

**The Vice-Chair:** All those in favour of Liberal motion 27? All those opposed? I declare the motion lost.

Government motion 28.

**Mr Martiniuk:** I move that subsection 49.15(2) of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

“Investigation by commissioner

“(2) If a complaint is referred to the commissioner under the bylaws, the commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to the secretary shall be deemed to be a reference to the commissioner.”

**The Vice-Chair:** All those in favour of government motion 28? All those opposed? It carries.

Liberal motion 29.

**Ms Castrilli:** I move that section 49.18 of the Law Society Act, as set out in section 21 of the bill, be amended by adding the following subsection:

“Offence

“(4) A person who knowingly contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.”

I’ve already spoken to this motion when I spoke to 27. The same arguments apply.

**The Vice-Chair:** Any further discussion on motion 29? If not, all those in favour of Liberal motion 29? All those opposed? The motion is defeated.

Government motion 30.

**Mr Martiniuk:** I move that paragraph 2 of subsection 49.21(2) of the Law Society Act, as set out in section 21 of the bill, be amended by striking out “under paragraph 1, 2, 3 or 4 of subsection 12(1)” in the first and second lines and substituting “under paragraph 1 or 2 of subsection 12(1) or under subsection 12(2).”

**The Vice-Chair:** All those in favour of government motion 30? All those opposed? I declare the motion carried.

Government motion 31.

**Mr Martiniuk:** I move that subsection 49.29(4) of the Law Society Act, as set out in section 21 of the bill, be amended by striking out “under paragraph 1, 2, 3 or 4 of subsection 12 (1)” in the first and second lines and substituting “under paragraph 1 or 2 of subsection 12(1) or under subsection 12(2).”

**The Vice-Chair:** All those in favour of government motion 31? Opposed? Government motion 31 carries.

Government motion 32.

**Mr Martiniuk:** I move that subsection 49.30(1) of the Law Society Act, as set out in section 21 of the bill, be amended by striking out “who is an elected benchner” in the second and third lines.

**The Vice-Chair:** All those in favour of government motion 32? Opposed? The motion carries.

Government motion 33.

**Mr Martiniuk:** I move that subsection 49.31(5) of the Law Society Act, as set out in section 21 of the bill, be amended by striking out “under paragraph 1, 2, 3 or 4 of subsection 12(1)” in the second and third lines and substituting “under paragraph 1 or 2 of subsection 12(1) or under subsection 12(2).”

**The Vice-Chair:** All those in favour of government motion 33? Opposed? I declare government motion 33 carried.

Liberal motion 34.

**Ms Castrilli:** I move that subsections 49.32(1) and (2) of the Law Society Act, as set out in section 21 of the bill, be struck out and the following substituted:

“Appeals to appeal panel

“(1) A party to a proceeding before the hearing panel may appeal a final or interlocutory decision or order of the hearing panel to the appeal panel.

“Appeal from costs order

“(2) An appeal of an order under section 49.28 shall not be commenced until the hearing panel has given a final decision or order in the proceeding.”

Again, this is an issue of due process. If decisions are going to be made that affect people’s lives, there ought to be a right of appeal. I think the parliamentary assistant has already acknowledged this through some previous motions put forward by the government. I hope that the government will support it.

1710

**The Vice-Chair:** All those in favour of Liberal motion 34? All those opposed? I declare the motion defeated.

Government motion 35.

**Mr Martiniuk:** I move that clause 49.38(b) of the Law Society Act, as set out in section 21 of the bill, be amended by inserting “subsection 30(3)” after “under” in the first line.

**The Vice-Chair:** All those in favour of government motion 35? All those opposed? Motion 35 is carried.

Shall section 21, as amended, carry? All those opposed? Section 21, as amended, is carried.

Section 22 through to section 27: Is there any discussion on those sections? If not, all in favour of passing sections 22 through to 27? Opposed? That’s carried.

Liberal motion 36.

**Ms Castrilli:** Chair, in view of the disposition of our motion 34, this is withdrawn.

**The Vice-Chair:** Motion 37.

**Ms Castrilli:** I move that subsection 61.2(4) of the Law Society Act, as set out in section 28 of the bill, be struck out.

That section, you will recall, deals with the application of the Statutory Powers Procedure Act, which is a minimum standard of due process at law, which in certain circumstances would not apply to this legislation. We’ve heard a fair amount of evidence before us in committee that this ought not to be the case, that particularly with an act that applies to the legal profession, it ought to be held at least to the same minimum standards as other legislation. I think the rest of it is all the same.

**The Vice-Chair:** All those in favour of Liberal motion 37? All those opposed? I declare it defeated.

Shall section 28 carry? Opposed? I declare section 28 carried.

Liberal motion 38.

**Ms Castrilli:** I move that paragraph 12 of subsection 62(0.1) of the Law Society Act, as set out in subsection 29(1) of the bill, be struck out.

This issue was raised by the law book publishers, you may recall, in their session. Their essential contention, if I understood it, was that the bill seeks to take away the power of Lieutenant Governor in Council over the reporting and publication of decisions of the courts and leaves it entirely in the hands of convocation to make bylaws.

I was told by the law society that that was not the intent and I asked the question, “If it’s not the intent and you don’t see this that this is a change, then why make the change?” If that’s the intent, and that’s obviously what



they've indicated to us, then there is no reason for the amendment in this particular statute and we should go back to what is in the original bill.

**Mr Kormos:** I'm voting against this. I was curious about what the publishers were getting at from day one. Mr Morrison's letter to Harnick that was released, the cigar and cognac letter, I was curious about that. When you read it in context, "Convocation may make bylaws," numbers 1 through 48, I think it becomes clearer and clearer that this is what empowers the law society to engage in its own little exercise of publishing the ORs.

Quite frankly, I've got to tell you right now I don't have a whole lot of sympathy for the law book publishers. Do you know what they charge for those things? Lots. Their arguments are things like small markets, but the American law book publishers, which have a market that's what, 10 times ours, charge lots too. If that argument were valid one would expect to see a somewhat lower price in the States where the scale is that much larger, and you don't. American law book prices are atrocious. Then they have these scams — the updating services, the loose-leaf services, stuff like that — I call them scams. You can end up paying more on a subscription than you can if you just buy a new loose-leaf set once a year sometimes. I appreciate there is the issue of timeliness. You want to have these things, and if you want them, I suppose you've got to pay for them.

Also there is a slick sort of breakdown between the various publishers. One publishes the Canadian criminal cases; the other one publishes the CRs. In many instances they overlap, they publish the same cases, but you've got to read both or buy both in case you miss a case from one or the other, and I'm just speaking of those two series by two different publishers.

Do you want to know what I would like to see? I would like to see the private sector completely out of reporting cases. Quite frankly, I think a strong argument could be made for the law society to be responsible for all reporting and to do it on a non-profit basis. There would be uniformity. There wouldn't be this overlapping. There wouldn't be the gouging that takes place, and I suspect, at the end of the day, both the legal profession and the public would be far better served. Maybe the only problem here is that Mr Morrison never sat down with me and had a cognac and a cigar, but I don't smoke cigars and my taste in cognac is rather unrefined. I wouldn't know what to do with a good cognac. I'd end up drinking it out of a water tumbler, and I'm sure Mr Morrison drinks his out of a snifter, one of those big ones, a Waterford snifter, crystal — at least Waterford if not a Lalique.

I tried, with the legal publishers, to be sympathetic and then I reflected upon the costs that are involved in buying those services and the quasi-duplication and I thought, "By God, what an argument for a one-source — the law society — non-profit distribution of case reporting." I appreciate that when you come to texts and things like that, that's a different story. Authors can market their writings if, when, where and how they please.

When it comes to case reporting, part of the argument was that this is public information and that it's in everybody's interest to have as much distribution of reported cases and have as many reported cases as possible, short of having the garbage bin full of the stuff that you don't want to have to read because it's of little relevance. So there's a strong public interest in getting this out to as many lawyers, much of the public and other people involved in the justice system, all aspects of the justice system.

I'm not very sympathetic to the private law book publishers, am I, Chair? You're right, I'm not. I'm sure they do a good service, but I'm not going to support this amendment for the reasons I've tried to state.

1720

**Ms Castrilli:** I've got to say, as usual, I'm impressed by Mr Kormos's illuminating comments but I wish they were relevant. The fact is that if we were discussing Mr Kormos's private member's bill on regulating the legal publishing industry, I would agree with him. I might even vote for it, but that's not what we're doing here.

My questions were very specific of the law society as to whether they envisioned that these amendments they sought changed the status quo. They said no. I've got to say, if they don't change the status quo, why are we bothering with the amendment? That's the only issue we're talking about here.

If the issue is to ensure that there is free access to reporting, which the law society assured me was their position, then why are we bothering with the amendment? It seems to me we know what the statute says. We're not entirely sure what the amendment says, and I'd rather stick with the statute than an amendment that I don't fully understand.

**The Vice-Chair:** Any further discussion?

We'll call the question for Liberal motion 38. All those in favour? All those opposed? The motion is defeated.

Any further discussion on section 29? Shall it carry? Opposed? Section 29 is carried.

Liberal motion 39.

**Ms Castrilli:** Chair, in view of previous discussion, this motion is withdrawn.

**The Vice-Chair:** Sections 30, 31, 32 and 33: Any further discussion on that? All in favour of those sections carrying? Opposed? Carried.

Government motion 40.

**Mr Martiniuk:** I move that subsection 34(2) of the bill be amended by striking out "paragraph 5" in the fifth and sixth lines and substituting "paragraph 3."

**The Vice-Chair:** Is there any further discussion on government motion 40?

**Ms Castrilli:** Just a comment more than anything else. This piece of legislation was introduced by the government some time ago, and we in the Liberal Party exhorted the government to act in an expeditious manner with respect to this piece of legislation. We indicated we agreed with the thrust of it. There were some concerns that we wanted to voice through hearings. We've heard from a number of presenters that indeed there are concerns.

Obviously with respect to this legislation there's still some work to be done and I certainly would exhort that the privacy commissioner be very much involved in the next step, because it's important.

Having said that, we've always been in favour of moving this piece of legislation forward as quickly as possible. It has taken some time for subcommittee meetings to be scheduled and for hearings to be scheduled. There's very little time before the House rises. I know there is some pressure to get this legislation through before we rise for Christmas. I exhort the members of the committee to exhort the government, whose power it is to bring this bill forward to third reading. I exhort them to do it as quickly as possible and that we move expeditiously to pass it into law.

**The Vice-Chair:** Any further discussion on government motion number 40? All those in favour? All those opposed? I declare the motion carried.

Will section 34, as amended, carry? Opposed? Section 34 carried.

Sections 35 through to 38: Are there any further discussions on those sections? If not, all those in favour? All those opposed? I declare sections 35 to 38 carried.

Section 39, the short title of the bill: Shall that carry? Opposed? The motion carried.

Shall the long title of the bill carry? All those in favour? All those opposed? Carried.

Shall Bill 53, as amended, carry? All those in favour? All those opposed? Bill 53, as amended, carried.

Shall Bill 53, as amended, be reported to the House?

**Mr Kormos:** A recorded vote, please.

### Ayes

Boushy, Castrilli, Kormos, Martiniuk, Stewart, Bob Wood.

**The Vice-Chair:** Thank you for your patience, ladies and gentlemen, and thanks for your efforts. We appreciate it. We are adjourned.

*The committee adjourned at 1726.*









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